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PUBLIC PAPERS
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ANNUAL MESSAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 2, 1883. }

To the Legislature :

In obedience to the provision of the Constitution which directs that the Governor shall communicate to the Legislature, at every session, the condition of the State, and recommend such matters to them as he shall judge expedient, I transmit this, my first annual message, with the intimation that a newly elected executive can hardly be prepared to present a complete exhibit of State affairs, or to submit in detail a great variety of recommendations for the action of the Legislature.

From the statement furnished me by the Comptroller, the details of which will be found in the annual report of that officer, it appears that the finances of the State are in a satisfactory condition.

The total funded debt on the 30th day of September, 1882, after deducting an unapplied balance in the Sinking Fund of the Canal Debt, was \$6,385,356.30. Of this sum, \$122,694.87 is the amount necessary to yield, at six per cent.

interest, the sum required to pay the annuities to Indians; \$3,000 is the unclaimed bounty debt; and the remainder, \$6,259,661.43, represents the Canal Debt. The only change in the funded indebtedness of the State during the last fiscal year was a contribution of \$309,717.00 to the Sinking Fund, thus reducing by that sum the debt remaining unprovided for on the 30th day of September, 1881.

The aggregate receipts of the State Treasury during the last fiscal year, including a balance from the previous year amounting to \$5,531,858.71, were \$17,735,761.59; the payments during the same period amounted to \$13,898,198.21, leaving a balance in the treasury at the beginning of the current fiscal year of \$3,837,563.38.

The amount received from taxes on corporations during the last year was \$1,539,684.27, being an increase of \$446,959.11 over the previous year.

The rate of taxation for the current fiscal year was fixed by the last Legislature at $2\frac{48}{100}$ mills on the dollar. This it is estimated, will yield on the present valuation of property a revenue of \$6,820,022.29.

The imperfection of our laws touching the matter of taxation, or the faulty execution of existing statutes on the subject, is glaringly apparent.

The power of the State to exact from the citizen a part of his earnings and income for the support of the Government, it is obvious should be exercised with absolute fairness and justice. When it is not so exercised, the people are oppressed. This furnishes the highest and the best reason why laws should be enacted and executed which will subject all property, as all alike need the protection of the State, to an equal share in the burdens of taxation, by means of which the Government is maintained. And yet it

is notoriously true that personal property not less remunerative than land and real estate, escapes to a very great extent the payment of its fair proportion of the expense incident to its protection and preservation under the law. The people should always be able to recognize, with the pride and satisfaction which are the strength of our institutions, in the conduct of the State, the source of undiscriminating justice, which can give no pretext for discontent.

CANALS.

The revenues and expenditures of the canals for the year ending September 30, 1882, were as follows :

REVENUES.

Tolls.....	\$647,602 88
Rent of surplus water	1,910 85
Miscellaneous sources.....	10,456 62
	\$659,970 35

EXPENDITURES.

For ordinary repairs :

Superintendent of Public Works	\$143,276 81
Engineers	30,000 00
Section superintendents.....	361,906 04
To collectors of canal tolls for salaries, clerk hire, pay of inspectors and office expenses..	35,337 23
Weighmasters and assistants, for salaries and office expenses.....	2,889 83
Salaries chargeable to the annual revenues, refunding tolls, printing and miscellaneous expenses.....	80,100 10
	\$653,510 01
Surplus revenue	\$6,460 34

For the year ending September 30, 1881, the revenue failed to meet the expenditures by the sum of \$205,642.45.

The following is a statement of freight carried and tolls collected from the opening of navigation to December first in the years 1881 and 1882:

	Tons moved.	Tolls collected.
1882	5,421,720	\$655,195 51
1881	5,143,877	631,621 11
Gain in 1882	<u>277,843</u>	<u>\$23,574 45</u>

To provide for the deficiency in the Sinking Fund under article 7, section 3 of the Constitution, it will be necessary to raise by tax the sum of \$1,038,198.34, which will be equal to about $\frac{38}{100}$ of a mill on the present valuation.

The Superintendent of Public Works estimates that the tolls received since September 30, 1882, with an unexpended appropriation in the Canal Fund, amounting together to about \$588,000, will be ample to make the necessary repairs and operate the canals until the close of the present fiscal year.

The adoption of the amendment to the Constitution abolishing tolls on the canals, renders it necessary for the present Legislature to provide by tax for their maintenance and repair for the year ending September 30, 1884.

The amount required for these repairs the Superintendent estimates at \$500,000. Some legislation will also be necessary, under our new canal policy, to provide for the inspection of boats and the collection and preservation of statistics.

Since, by the adoption of the constitutional amendment, the cost of maintaining the canals is to be met by a tax upon all the property of the State, it is our plain duty to deal with this subject with strict economy. The safeguards heretofore existing in the Constitution, which protected the

taxpayers from unlimited expense in the management and repair of the canals, having been relinquished by the people, this act is by no means to be regarded as an indication that they have forgotten the time when the extravagance and fraud connected with the canals were a scandal and reproach to the State. They have, in their devotion to their great water-ways, and in the fear that the limitations of the Constitution might impair their usefulness, surrendered the protection thus afforded, together with the revenue derived from tolls, and have intrusted the whole matter to their chosen representatives. In the execution of the trust committed to us under such circumstances, all propositions and schemes for the enlargement of the canals or the expenditure of large sums of money in their alteration, should, in my opinion, be stubbornly opposed, at least until the effect of the abolition of tolls is fully apparent. At the present time, what the people want, and what they will demand, is the management of the canals as they now exist in such manner that their utmost capacity shall be made available at the lowest possible cost.

Considerable sums of money which have been appropriated for specific canal purposes, still remain in the treasury, the expenditure of the same having been heretofore prevented by the prohibition of the Constitution. It is suggested that these moneys might well constitute a fund to be drawn upon to meet unforeseen emergencies.

CANAL APPRAISERS AND AUDITOR.

From a statement furnished by the Canal Appraisers, it appears that the number of claims filed during the last fiscal year was eighty-nine, amounting in the aggregate to \$168,652.57. During the same time 273 claims, amounting

to \$866,741.58, have been disposed of, the aggregate of awards made upon the same amounting to only \$19,644.76.

Since the close of the fiscal year a large number of other claims have been adjudicated, which leaves at the present date about 400 to be acted upon.

At the close of the year ending September 30, 1881, there appears to have been 741 claims on file awaiting determination.

The expense attending the maintenance of this Board, exclusive of the payment of awards, for the last fiscal year, was \$39,639.20, of which sum \$15,280.07 was paid to various attorneys employed to defend, on the part of the State, against claimants.

I desire to submit in this place for consideration the question whether it would not be well to establish in the place of the Board of Canal Appraisers and the Board of Audit, as now constituted, some tribunal which shall have the power to hear and determine all claims against the State. It seems to me that justice to the claimants and protection to the State would be much better assured if these demands were submitted to persons whose experience and training fit them for the examination of the questions involved, according to the rules and methods which prevail in courts of justice. It is apparent that such a tribunal could be maintained, and a competent person provided as counsel to protect the interests of the State, at a much less expense than that attending the Board of Canal Appraisers and Board of Audit, and with vastly more satisfactory results.

I can see no reason why the office of Auditor of the Canal Department may not also be abolished. The cost of its maintenance during the last year is reported as being

more than \$22,000. Since the change in the Constitution the duties which might devolve upon that officer, could, it is believed, be well performed in the Comptroller's office with very little increase in the expense of that department.

It is supposed that the changes above suggested would result in an annual saving of more than \$30,000, with no detriment to the public service.

PUBLIC EDUCATION.

The Superintendent of Public Instruction has furnished the following statement relative to his department, covering the year ending September 30, 1882.

Total receipts, including balance on hand	
October 1, 1881.....	\$12,543,446 34
Total expenditures.....	11,181,986 55
Amount paid for teachers' wages.....	7,986,383 96
Amount paid for school houses, repairs, furniture, etc.....	1,525,578 26
Estimated value of school houses and sites..	30,333,641 00
Number of teachers employed for the legal term of school.....	20,899
Number of teachers employed during any portion of the year.....	31,232
Number of children attending public schools.....	1,041,089
Number of persons attending Normal schools ...	6,156
Number of volumes in school district libraries.....	705,812
Number of persons in the State between the ages of five and twenty-one years.....	1,681,113

The success of our common school system is so closely connected with the welfare of the State, that its satisfactory condition should be a subject of congratulation to every citizen. The number of children attending public

schools during the last fiscal year was 19,807 in excess of the number reported the year previous, while my predecessor in his last annual message called attention with regret to a decrease in attendance for the year then closed.

BANKS.

Seventy-six banks of discount and deposit were engaged in active business under the provisions of the banking laws of the State, on the 1st day of October, 1882. On that day their condition was reported as follows :

Resources.....	\$122,563,460
Capital	18,805,700
Surplus and profits.....	9,657,702
Due depositors.....	82,050,980
Other liabilities	12,049,078

The increase in deposits during the year was \$6,333,850; profits, \$729,527; loans and discounts, \$5,503,379, and the net aggregate increase in assets was \$9,099,888.

During the year six new banking associations were organized, one failed, and one was converted from a State to a National bank.

On the 1st day of July, 1882, the number of savings banks reported to the Superintendent of the Banking Department was 127, of which number eleven are in process of voluntary liquidation. During the year one new savings institution was organized, and one closed, having first paid its depositors and creditors in full. The condition of the savings banks on the day above named was as follows :

Resources.....	\$460,123,582
Due depositors.....	400,743,838
Surplus.....	59,157,039
Other liabilities	222,705
Number of open accounts	1,066,518

The increase in these several items during the year was as follows:

Resources.....	\$35,918,774
Deposits	30,071,541
Surplus	5,853,656
Open accounts	<u>70,776</u>

There are fourteen trust, loan and mortgage companies in the State. Their condition on July 1, 1882, was as follows:

Resources.....	\$139,758,534
Capital	12,579,500
Surplus and profits	9,854,376
Deposits	104,888,185
Other liabilities	<u>12,436,473</u>

This statement shows an increase over last year of \$10,765,848 in deposits, \$1,322,027 in surplus and profits, and a net aggregate increase in assets of \$13,869,620.

On the first day of October last, there were in the State fourteen corporations for the safe keeping and guaranteeing of personal property, employing \$2,676,900 of capital in the aggregate.

State supervision of banks is worse than useless unless it is thorough and effective. Under the law as it now stands, the Superintendent of the Banking Department must cause an examination to be made of these institutions only when, in his opinion, there is good reason to suspect an unsound condition, or false reports. It would seem that the solvency of the banks and the protection of depositors would be better assured, if one or more examinations, in each year, were made compulsory on the Department.

INSURANCE.

The records of the Insurance Department show that there were 151 fire insurance companies doing business in this State on the 1st day of July, 1882, of which sixty-nine were New York State companies, fifty-five were organized in other States, and twenty-seven were foreign companies, with assets amounting in the aggregate to \$154,810,890.43; their total liabilities, including capital stock, were \$111,423,096.62, and their net surplus, \$43,387,793.81.

There were twelve marine insurance companies doing business in this State on the 1st day of January, 1882, with assets amounting to \$22,888,423.93, and liabilities, including capital stock and scrip, amounting in the aggregate to \$18,183,850.69, leaving a net surplus of \$4,704,573.24.

There are twelve life insurance companies organized and doing business under the laws of this State, with assets amounting in the aggregate to \$225,966,512.02; liabilities, \$187,050,970.48, leaving a surplus as regards policyholders of \$38,915,541.54.

There are also seventeen life insurance companies organized in other States, but doing business in this, with total assets of \$203,310,947.58, and liabilities amounting to \$169,813,325.83, leaving a surplus as regards policyholders of \$33,497,621.75; also one foreign life insurance company, with total assets in the United States of \$123,735.09, liabilities, \$5,248.75, and surplus, \$118,486.34. We have six casualty insurance companies, of which two are New York companies, two organized in other States, and two are foreign companies, with aggregate assets amounting to \$3,110,737.11; liabilities, \$1,948,199.53, and a net surplus of \$1,162,537.58.

The number of co-operative insurance companies trans-

acting business in this State on the 1st day of January, 1882, was 115, having 325,524 certificates in force, of which 90,219 were written during the year 1881. Within the last-mentioned year 28,274 certificates terminated, and losses to the amount of \$4,742,090 were paid by this class of insurance organizations.

During the year 1882, there was organized under the general insurance laws of this State, one mutual fire insurance company, with a paid up cash contribution of \$200,000, and one plate glass insurance company, with a paid up capital of \$100,000. Eight fire insurance companies, four organized in other States, and four foreign companies, have, during the year, been admitted to transact business in this State, with total assets amounting to \$3,220,464.36, and liabilities, including capital stock, amounting to \$1,554,788.42. Thirteen fire, two life and two marine insurance companies have ceased to do business in this State during the year 1882.

On the 1st day of July, 1882, the amount of securities, for the protection of policyholders insured by the various insurance companies transacting business in this State, held on deposit in the Insurance Department, as required by law, was \$13,594,749.30, classified as follows:

New York State life insurance companies.....	\$2,852,097	36
New York casualty insurance companies.....	201,509	95
New York fire insurance companies.....	1,653,000	00
Fire insurance companies of other States.....	20,100	00
Foreign insurance companies.....	8,868,041	99
	<u>\$13,594,749</u>	<u>30</u>

The Superintendent of the Insurance Department has distributed to policyholders, in bankrupt insurance companies, up to July 1, 1882, from the securities held by him for their benefit, the sum of \$812,546.55.

I am informed that the expenses of maintaining this department for the year ending September 30, 1882, were at least \$100,000, while recent investigations tend to convince the ordinary mind that this department, and the laws in relation to the subject of insurance, do not furnish the protection to the people which they ought. I suggest that steps be taken to make this department more useful and less expensive, and that the law touching the entire question of insurance be reduced to a plain and simple enactment which shall be a safeguard against the abuses to which this important interest is now exposed.

NATIONAL GUARD.

Under the policy recently inaugurated, the National Guard has been reduced to four divisions, eight brigades, fifteen regiments, one battalion and forty separate companies of infantry, and seven batteries of artillery, comprising in the aggregate 11,608 officers and enlisted men.

The changes made during the year comprise the disbandment of separate companies in Wyoming, Orleans and Madison counties. A separate company in Chautauqua county, the mustering out of which had been included in the orders incident to the general reorganization of the force, has been retained.

On the first day of July last a camp of instruction was established near Peekskill, which was maintained until the fourth day of August. Six regiments were consecutively ordered to this camp, remaining there from five to eight days each. If, as the result of this inaugural encampment seems to indicate, the usefulness of the National Guard can be thereby promoted, with a reasonable expenditure of money, I am of the opinion that a sufficient amount should

be appropriated annually to permit at least a part of the force to receive the advantages of this new feature of military instruction.

With the reduction of the number of men enrolled, the efficiency and discipline of the force becomes a matter of the first importance; and I trust that all legislation on the subject, as well as the administration of the military affairs of the State, will be in that direction.

STATE PRISONS.

The earnings and expenditures of the several State prisons during the year ending September 30, 1882, are shown by the following table:

AUBURN.	
Earnings.....	\$120,234 16
Expenses.....	122,926 43
Deficiency	<u>\$2,692 27</u>
CLINTON.	
Earnings.....	\$60,361 59
Expenses	99,606 47
Deficiency	<u>\$39,244 88</u>
SING SING.	
Earnings.....	\$241,321 93
Expenses	193,127 20
Surplus	<u>\$48,194 73</u>

It will be seen from this statement that the total earnings of the three prisons were \$6,257.58 in excess of their expenses, and that the large surplus in Sing Sing creates this balance in favor of the State, notwithstanding the deficiency in Auburn and Clinton prisons. But I deem it

proper to call attention to the fact that the number of convicts confined at Sing Sing is considerably in excess of the number of cells provided. This necessitates the placing of two convicts in many of the cells, which must be injurious to the morals and health of the prisoners so confined, and dangerous to the discipline of the institution. At the same time Auburn and Clinton prisons have sufficient vacant cells to more than relieve, if occupied, the Sing Sing prison of its surplus of convicts beyond its natural capacity.

On the thirtieth day of last September the number of convicts confined in Sing Sing prison was 1,526, while Auburn contained but 912, and Clinton 499.

If these penal institutions are self-sustaining, without injury or embarrassment to honest labor, it is a matter for congratulation; but it is, at least, very questionable whether the State should go further and seek to realize a profit from its convict labor. In my judgment it should not, especially if the danger of competition between convicts and those who honestly toil, is thereby increased, and the over-crowding of any of the prisons, with its attendant evils, is the result.

The asylum for insane convicts at Auburn contained, on the 30th day of September, 1882, one hundred and forty-one inmates, of which nine were women.

CHARITABLE INSTITUTIONS.

The following information is furnished by the State Board of Charities, who will, at an early day, present their report to the Legislature in detail.

The value of the property held by the various charitable institutions on the 30th day of September, 1882, was

\$41,103,809.54, of which \$33,501,605.36 was real estate, and \$7,602,304.18 is personal property.

The receipts of all these institutions during the last fiscal year were \$10,186,810.91, derived from the following sources :

State of New York	\$719,302 40
Cities and counties	4,236,130 00
Paying inmates.....	371,017 13
Invested funds	397,074 90
Donations.....	1,283,876 59
Loans	355,043 00
Labor of inmates...	63,747 05
All other sources	2,760,620 84
	\$10,186,810 91

The expenditures during the same period were as follows :

State institutions	\$1,482,819 84
County and city institutions.....	2,340,806 55
Incorporated benevolent institutions.....	5,891,439 23
	\$9,715,065 62

The number of State paupers in the various institutions

September 30, 1881, was 164
Committed during the year ending September 30, 1882, 1,392

..... 1,556
During the same period the number of deaths was, 43
Discharged 1,350
..... 1,393

Under care October 1, 1882..... 163

Of the number reported as discharged, 778 were furnished transportation to their homes in other States and countries, or to their places of legal settlement.

During the year the board has returned to various countries of Europe, forty-eight lunatic, idiotic, crippled, blind

and otherwise disabled alien paupers, who had been deliberately shipped to our shores by the authorities of foreign cities and towns, or by relatives, guardians and friends, in order to shift the burden of their support to our public charities. It is to be hoped that the continued return of such unfortunates to those who should legally and naturally provide for them will in time discourage such mean and disgraceful attempts to evade a plain and humane duty.

The number of insane in the various institutions on the 30th day of September, 1882, was 10,443, distributed as follows :

In State institutions	3,105
In county poor-houses and asylums	1,955
In city alms-houses and city asylums.....	4,739
In private asylums.....	503
In the Asylum for Insane Convicts at Auburn.....	141
	10,443

Of the insane in the State institutions, 2,022 were confined in the Willard and Binghamton asylums, they being entirely of the chronic class.

The number of insane persons in the several institutions, as given above, is 384 in excess of those reported at the close of the previous year, and thus the constant increase of insanity in our State is further demonstrated. The problem of the custody, care and treatment of this pitiable class is, therefore, crowded more and more upon the attention of all thinking citizens and those who make their laws. I am satisfied that existing statutes on this subject need amendment. The results of recent investigations ordered by the Legislature, and the report of the

Board of Charities, will doubtless contain valuable suggestions on this subject.

If, as seems to be generally conceded, insanity is a disease needing special and peculiar treatment, it must be that the chance of improvement in those affected by this malady would be greatly increased if they could have the care afforded by an institution especially established for its treatment.

The usefulness of such institutions depends very much on the confidence which the public have in their proper conduct, and it is abundantly demonstrated that the people are ready to believe, sometimes on very slight grounds, the gravest charges of mismanagement and inhuman treatment with reference to their superintendence. It is equally certain that if abuses in the care of the insane exist, there should be the least possible opportunity for their continuance without exposure. Frequent visitations and the most thorough examination should be made either by local boards or by properly constituted State authorities, which the people would be sure were in nowise committed, except to the faithful discharge of their duties. By this means these institutions would be protected from unjust charges and suspicion, and the confidence of our citizens in their management be secured.

A dispute has arisen between the Board of Charities and the managers of some of the insane asylums in regard to their respective rights and duties, which should be settled by plain statutory provisions.

IMMIGRATION.

The number of immigrants landed at Castle Garden from January first, 1882, to December first, 1882, was 435,647, being an increase of 18,566 over the same period of the preceding

year. The Commissioners of Emigration estimated that the number arriving during the month of December would make the total for the year 460,000, being the largest number landed in any year since the creation of the Commission in 1847.

Of the appropriation of \$200,000 made by the last Legislature for the maintenance of the Commission, \$47,569.46 have been expended in protecting the immigrants while landing, directing and forwarding those who had destinations fixed upon, assisting such as sought employment, and caring for the sick and helpless, and \$23,473.24 for special repairs to buildings.

Under an act of Congress, passed in August last, the sum of fifty cents for each alien passenger intending to remain in this country is now collected by the United States Treasury Department, and credited to the Emigration Commission. The sum collected for the first three full months since the law went into operation was \$8,000 less than the expenditure for that period; and since during the ensuing winter months immigration will decrease, the deficiency is likely to be increased to such an extent as to require the expenditure during the coming year of the amount now remaining to the credit of the board in the hands of the State Treasurer. Judging from the result thus far apparent, it is not likely, in the opinion of the Commissioners, that the collections by the Federal Government will be sufficient to meet the expense of this work, and further appropriations will be necessary, unless some economies can be effected in the system of the State supervision.

QUARANTINE AND HEALTH OFFICER.

The quarantine establishment in the port of New York has been conducted in much the usual manner during the

past year, and no contagious disease has been allowed to enter the State through the channels of immigration or commerce. It appears that the amount paid from the State Treasury for the maintenance of this department for the year ending September 30, 1882, including the salaries of three Quarantine Commissioners, was \$35,500.

From a report of a special committee appointed by the Senate in 1881, it appears that while the emoluments of the Health Officer of the Port of New York were very difficult of exact ascertainment, the committee came to the conclusion that the net income of that officer did not average less than \$40,000 per annum, and might, in favorable years, reach a sum upwards of \$60,000. No one can read this report without being convinced that this estimate is a very moderate one, and represents a sum of money derived from the commerce of our principal port in startling disproportion to services rendered, and greater than any man ought to receive for official service.

If the fees and charges are so high that the commerce of the port is injuriously affected by their collection, they should be reduced; if they are to be continued, all but a reasonable sum for the salary of the Health Officer should be applied, if legally possible, to the support of the quarantine establishment; and if this cannot be done, they should be so limited as to yield to the officer a fair salary only, thus relieving our commerce to that extent.

And here it is deemed proper to call the attention of the Legislature to the subject of Harbor Masters. The law now in force provides for the appointment of these officers, and a Captain of the port of New York. Their duties are generally to provide and assign suitable accommodations for all ships and vessels, to regulate them at the stations they

shall occupy at the wharves, and to exercise other control, of a kindred character, over shipping.

As compensation for the performance of their duties, they are by the statute under which their appointment is authorized, permitted to collect certain fees to be paid by the masters, owners or consignees of vessels entering the port.

In October, 1876, the Supreme Court of the United States adjudged that the provision of our statute permitting the collection of those fees, was unconstitutional and void, and yet their exaction has been continued by these officers appointed by the State, and having no other means of compensation. The money thus collected is called by the captain of the port "voluntary payments by the interest served."

The great State of New York should no longer rest under the accusation that it knowingly permits officials of its own creation to burden the commerce entering its port, by the exaction of charges which the highest tribunal in the land has determined to be illegal.

It is worthy of the consideration of the Legislature whether the duties attached to these offices could not properly be performed under the auspices of the department of docks in the city of New York. If, however, it is determined that the office of harbor master is necessary, some way should be devised by which he can be legally compensated for his services.

The subject of Port Wardens and the system of pilotage connected with the port of New York are also commended to the consideration of the Legislature as matters which need further regulation by well digested laws.

A reference is hardly necessary to the fact that if we are

to maintain the supremacy of our port against a constantly increasing competition, there should be no unfavorable contrast in regard to fees and charges, which are indirectly a tax on its commerce.

THE NEW CAPITOL.

The total cost of the New Capitol to date, including a balance of about \$150,000 remaining to meet the expense of the work now in progress, is \$14,222,993.09. The two legislative chambers and offices for the most of the State officers have been completed. The offices still to be provided for in the new building are the Comptroller, State Treasurer, State Engineer and Surveyor, Superintendent of the Bank Department, Canal Appraisers, State Board of Charities, the State Library and the Court of Appeals.

The \$1,400,000 expended during the last year have been applied to the completion of the east front and roof; the erection of outer walls of the west front; the construction of a room for the Court of Appeals, which will be ready for use about the first day of March; the carrying up of the main tower to the roof line of the main walls, and the completion of some of the department offices, which were unfinished at the beginning of the year.

The entire outer walls are now substantially completed and the contract for the roofing yet undone has been awarded.

The Commissioners estimate that a million or a million and a quarter dollars, at most, is all that can be expended economically during the coming year.

A Commission was appointed during the past year by my predecessor, pursuant to chapter 295 of the Laws of 1882, to survey and examine the different parts of the building

as to the safety and durability of the work, more especially the Assembly Chamber and its ceiling. In their report, which was made in September last, they express doubt as to the stability of the vaulted ceiling of the Assembly Chamber, and recommend that most of the stone vaulting be removed, and its place supplied with a construction of wood.

This report has provoked a reply from the architects of the building, in which they insist that in its present state, and without repairs, there is nothing in the condition of the ceiling of the Assembly Chamber to warrant apprehension in regard to its safety, or to prevent its immediate occupation.

It must be regarded, at least, as very unfortunate that this question should arise before the completion of this building, and notwithstanding the fact that the expense of its construction thus far has been the cause of so much complaint.

If there remains a question as to its safety in any part, it should be put at rest before proceeding further. If there is no such question, the building should be finished as quickly as practicable, and the delays, errors and expense attending its construction, if possible, forgotten.

JUDICIAL AMENDMENT.

At the last election the people adopted an amendment to the Constitution, by the terms of which the Legislature has the power to organize an additional General Term of the Supreme Court, and to provide for the election by the electors of the respective judicial districts, of not more than two additional justices of that court in the first, fifth, seventh and eighth, and not more than one such justice in

the second, third, fourth and sixth judicial districts. In the performance of the duty imposed by this amendment, extraordinary care should be exercised in order that the enormous expense which the people are already called upon to meet in the support of the various branches of the judiciary of the State, shall not be increased beyond the amount necessary to relieve such of the courts as are plainly overburdened.

APPORTIONMENT.

The last Legislature neglected its plain duty in failing to reapportion the State into congressional districts, according to the United States census of 1880, and pursuant to the allotment by Congress of our quota of members of the House of Representatives. It is to be hoped that this work will be speedily undertaken. To make an apportionment of the population of the State into thirty-four districts, having due regard to geographical situation and contiguity of territory, requires but little time and no great amount of ingenuity if attempted with fair and honest intentions.

REFORM IN CIVIL SERVICE.

It is submitted that the appointment of subordinates in the several State departments, and their tenure of office or employment should be based upon fitness and efficiency, and that this principle should be embodied in legislative enactment, to the end that the policy of the State may conform to the reasonable public demand on that subject.

MUNICIPAL GOVERNMENT.

The formation and administration of the government of cities are subjects of much public interest, and of great importance to many of the inhabitants of the State. The

formation of such governments is properly matter for most careful legislation.

They should be so organized as to be simple in their details and to cast upon the people affected thereby, the full responsibility of their administration. The different departments should be in such accord as in their operation to lead toward the same results. Divided counsels and divided responsibility to the people, on the part of municipal officers, it is believed, give rise to much that is objectionable in the government of cities. If, to remedy this evil, the chief executive should be made answerable to the people for the proper conduct of the city's affairs, it is quite clear that his power in the selection of those who manage its different departments should be greatly enlarged.

PRIMARY ELECTIONS.

The protection of the people in their primaries will, it is hoped, be secured by the early passage of a law for that purpose, which will rid the present system of the evils which surround it, tending to defraud the people of rights closely connected with their privileges as citizens.

SPECIAL LEGISLATION.

It is confidently expected that those who represent the people in the present Legislature will address themselves to the enactment of such laws as are for the benefit of all the citizens of the State, to the exclusion of special legislation and interference with affairs which should be managed by the localities to which they pertain.

It is not only the right of the people to administer their local government, but it should be made their duty to do so. Any departure from this doctrine is an abandonment of the principles upon which our institutions are founded,

and a concession of the infirmity and partial failure of the theory of a representative form of government.

If the aid of the Legislature is invoked to further projects which should be subject to local control and management, suspicion should be at once aroused, and the interference sought should be promptly and sternly refused.

If local rule is in any instance bad, weak or inefficient, those who suffer from mal-administration have the remedy within their own control. If, through their neglect or inattention, it falls into unworthy hands, or if bad methods and practices gain a place in its administration, it is neither harsh nor unjust to remit those who are responsible for those conditions to their self-invited fate, until their interest, if no better motive, prompts them to an earnest and active discharge of the duties of good citizenship.

CONCLUSION.

Let us enter upon the discharge of our duties, fully appreciating our relations to the people, and determined to serve them faithfully and well. This involves a jealous watch of the public funds, and a refusal to sanction their appropriation except for public needs. To this end all unnecessary offices should be abolished, and all employment of doubtful benefit discontinued. If to this we add the enactment of such wise and well considered laws as will meet the varied wants of our fellow citizens and increase their prosperity, we shall merit and receive the approval of those whose representatives we are, and with the consciousness of duty well performed, shall leave our impress for good on the legislation of the State.

GROVER CLEVELAND.

VETO, SENATE BILL, NOT PRINTED, AUTHORIZING
THE COUNTY OF MONTGOMERY TO BORROW
MONEY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 26, 1883. }

To the Senate :

Senate bill, not printed, entitled "An act authorizing the Board of Supervisors of the County of Montgomery to borrow money on the credit of said county, and to provide for the payment thereof," is herewith returned without approval.

This bill authorizes the issue of bonds by the Board of Supervisors of Montgomery county, amounting to \$97,458.64, which shall bear interest at the rate of five per cent. per annum, and be made payable on the first day of March, 1884.

It is claimed that by the failure of the assessors in several of the towns in the county mentioned to properly verify the assessment rolls returned to the Board of Supervisors in the year 1882, it is impossible to legally levy and collect the taxes necessary to meet the audits and appropriations made at the last meeting of the board, and that the issue of the bonds authorized by the bill is necessary in order to provide funds to pay such audits and appropriations.

By the terms of the bill a tax is to be levied on the taxable property in the county, and collected and paid in the year 1883, for the purpose of raising money to pay the bonds and the interest thereon.

This involves the levying and collection of this tax with the usual annual tax of that year. By this means a double tax will be levied and collected at the same time, and an

indebtedness which should be assessed upon the property in the county at its valuation when the tax should have been levied, will be charged upon property the valuation of which may be very much changed, and which may be held by other parties. And it may well be, that property will be burdened to pay a share of the current expenses of the county, which were incurred before such property had any taxable existence within said county.

This is manifestly unfair, and would probably give rise to legal complications.

The defects in the verification of the assessment rolls which it is supposed make the passage of this bill necessary, are so gross and palpable in the light of the statute on the subject, that they should have been early discovered and remedied. It is not unlikely that the correction of these errors was neglected with the expectation of seeking legislative aid as the easiest way out of the difficulty.

This practice should be discouraged, and mistakes of this description should be corrected if possible where they originated. In this case, if the interference of the Legislature is indispensable, it should, I think, be invoked to authorize the immediate levy of a tax to raise the money required to pay this indebtedness of the county, based upon the value of property at the time when the usual assessment rolls for the year 1882 should have been made.

This would provide a plan less subject to legal question than that embodied in the bill under consideration, and which it is believed would be accompanied with less expense to the taxpayers than the interest on the bonds proposed to be issued.

GROVER CLEVELAND.

LETTER TO ISAAC V. BAKER, JR., SUPERINTENDENT
OF STATE PRISONS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 2, 1883.* }

HON. ISAAC V. BAKER, JR., *Superintendent of State Prisons.*

DEAR SIR: I deem it proper to call your attention to the provisions of section 108 of chapter 460 of the laws of 1847, which prohibits the infliction of blows upon any convict in the State Prisons, by the keepers thereof, except in self-defense or to suppress a revolt or insurrection; and also to chapter 869 of the laws of 1869, abolishing the punishments commonly known as the shower-bath, crucifix or yoke, and buck. I suppose these latter forms of punishment were devised to take the place of the blows prohibited by the law of 1847.

Both of the statutes above referred to seem to be still in force, and, in my opinion, they are in no manner affected by the Constitutional Amendment giving the Superintendent "the superintendence, management and control of the "prisons," nor by sections 1 and 5 of chapter 107 of the laws of 1877, providing that the Superintendent shall have the management and control of the prisons and of the convicts therein, and of all matters relating to the government, discipline, police, contracts and fiscal concerns thereof, and that he shall make such rules and regulations for the government and punishment of the convicts as he may deem proper.

I especially desire to avoid any injurious interference with the maintenance by the prison authorities of efficient

discipline ; but I insist that, in the treatment of prisoners convicted of crime, the existing statutes of the State on that subject should be observed.

Yours respectfully,

GROVER CLEVELAND.

VETO, ASSEMBLY BILL, NOT PRINTED, TO CHANGE
TIME OF ANNUAL TOWN MEETING, TOWN OF
HECTOR, SCHUYLER COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 5, 1883.* }

To the Assembly :

Assembly bill, not printed, entitled "An act authorizing and requiring the annual town meeting for the town of Hector, in the county of Schuyler, for the year one thousand eight hundred and eighty-three, to be held on the first Tuesday in April next," is herewith returned without approval.

This legislation seems to be prohibited by the provision of the Constitution which declares that the Legislature shall not pass a private or local bill providing for the election of members of boards of supervisors. And if it is not thus prohibited, there seems to be no sufficient reason why the town meeting referred to in the bill should be postponed. It is alleged that the prevalence of a contagious disease in the town mentioned renders such a postponement proper ; but upon inquiry I am convinced that there will be a fair expression of the choice of the electors if the town meeting is held at the usual time.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 4, TO AMEND CHARTER
OF CITY OF ELMIRA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 5, 1883. }

To the Assembly:

Assembly bill No. 4, entitled "An act to amend chapter three hundred and seventy of the laws of eighteen hundred and seventy-five, entitled 'An act to amend and consolidate the several acts relating to the city of Elmira,'" is herewith returned without approval.

This bill provides, among other things, that the city of Elmira shall not be liable for damages or injury sustained by any person in consequence of any street, highway, bridge, culvert, sidewalk or cross-walk in said city being out of repair, unsafe, dangerous or in any manner obstructed, unless actual notice in writing of such condition be given to the common council, the mayor or the city clerk, at least forty-eight hours previous to such damage or injury. It is also provided that all claims (which was probably intended for claimants) against the city for damages or injury alleged to have arisen from such defective, unsafe or dangerous condition, or from the negligence of the city authorities in respect to any such street, highway, bridge, culvert, sidewalk or cross-walk shall, within fifteen days after the happening of such damage or injury, notify the mayor or city attorney in writing, signed by the claimant and duly verified, describing the time, location of the place where such injury occurred, cause and extent of the damage or injury, and that the failure to so present such claim shall be a bar to any action or proceedings therefor against

the city. The time for commencing an action for such damage or injury is limited to six months from the happening of the same.

These provisions establish a different rule to govern the liability of the city of Elmira in cases of injury caused by negligence, than that which prevails in other parts of the State.

I regard this as special legislation of the most objectionable character.

Besides being wrong in principle, the practical operation of such an enactment cannot fail, it seems to me, to produce injustice and jeopardize personal rights. Under the provisions of this bill the municipality is absolved from the consequences of the grossest negligence of its agents and servants resulting in the most serious injury to the citizen, unless actual notice of the negligent acts or omissions be given. No person would be likely to serve such notice in anticipation of being himself injured by reason of the conditions specified in the bill; and if he did, he would by that very act furnish such proof of his knowledge of the existence of danger, and his opportunity to avoid it, as might defeat his claim for redress. And certainly a cause of action against the city for injuries sustained through negligence ought not to depend upon anything which a stranger to the controversy may have done or omitted.

I am also unwilling to sanction such an invitation to relax the duty of municipal authorities to properly care for the duty of the citizen.

The provisions of the bill requiring the presentation of a claim for damages within fifteen days, and the commencement of an action within six months after the happening of the injury, are obviously objectionable, as unnecessarily and unreasonably restricting the right of the party injured, to

recover by a resort to the courts the damages which he has sustained.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 26, TO INCORPORATE
THE DARWIN R. BARKER LIBRARY ASSOCIATION
OF FREDONIA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 9, 1883.* }

To the Assembly:

Assembly bill No. 26, entitled "An act to incorporate the Darwin R. Barker Library Association of Fredonia, New York," is herewith returned without approval.

We have general statutes regulating the organization of precisely such associations as this bill contemplates, and the creation of corporations of this description by special act, except when, in the judgment of the Legislature, its object cannot be attained under general laws, is distinctly prohibited by article eight of the Constitution.

There certainly appears to be no necessity for the passage of a special act in this particular case to effectuate all the purposes which the proposed corporation should be created to accomplish.

If the special enactment is sought in order to exempt this corporation from the payment of local taxes, as is provided by the eighth section of the bill, it should, in my opinion, be refused, because if not prohibited by the clause in the Constitution forbidding the Legislature from passing a private or local bill granting to a private corporation or association any exclusive privilege or immunity, no sufficient reason is apparent for the exemption of the property

of this corporation from such taxation, as is borne by others of its class.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 88, TO AUTHORIZE SUPERVISORS OF CHAUTAUQUA COUNTY TO APPROPRIATE MONEY FOR A SOLDIERS' MONUMENT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER.

ALBANY, February 12, 1883. }

To the Assembly :

Assembly bill No. 88, entitled "An act authorizing the Board of Supervisors of Chautauqua county to appropriate money for the purchase of land upon which to erect a soldiers and sailors' monument," is herewith returned without approval.

It is not an agreeable duty to refuse to give sanction to the appropriation of money for such a worthy and patriotic object ; but I cannot forget that the money proposed to be appropriated is public money to be raised by taxation, and that all that justifies its exaction from the people, is the necessity of its use for purposes connected with the safety and substantial welfare of the taxpayers.

The application of this principle furnishes, I think, a sufficient reason why this bill should not be approved.

I am of the opinion, too, that the appropriation of this money by the Board of Supervisors would constitute the incurring of an indebtedness by the county to be thereafter met by taxation. If this be true, the proposed legislation is forbidden by section eleven of article eight of the Constitution, which provides that no county, city, town or village

shall be allowed to incur any indebtedness except for county, city, town or village purposes.

Before this prohibition became a part of the Constitution, a statute was passed permitting monuments to be erected to fallen soldiers at the expense of the inhabitants of the county within which they were located; but the expenditure of money raised by taxation for such a purpose was only allowed when especially sanctioned by the vote of a majority of all the electors of the county. In the bill under consideration the taxpayers are not permitted to be heard on the subject.

It is thus evident that the legislation proposed, guards less the rights and interests of the people than the statute passed before the Constitutional amendment prohibited all enactments of this description.

I may perhaps be permitted to express the hope that a due regard to fundamental principles and a strict adherence to the letter and spirit of the Constitution, which furnish the limit as well as the guide to legislation, will prevent the passage of bills of this nature in the future.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 162, TO AUTHORIZE CERTAIN TOWNS IN JEFFERSON AND ST. LAWRENCE COUNTIES TO RAISE LIENS UPON THEIR RAILROAD STOCKS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 19, 1883. }

To the Assembly:

Assembly bill No. 162, entitled "An act to authorize the towns of Philadelphia, Theresa and Alexandria, in Jefferson

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county, and the towns of Hammond and Morristown, in Lawrence county, to raise moneys to relieve their railroad stocks from existing liens and burdens," is herewith returned without approval.

This bill has evidently been drawn with a view of avoiding any constitutional objection on its face; but an explanation of its real purposes has led me to the conclusion that it ought not to become a law.

Certain stock of the Black River and Morristown Railroad Company is held by or on behalf of the towns named in the bill, but this stock is in no manner pledged, mortgaged or hypothecated, and is subject to no actual lien or charge.

The design is, as I am informed by the friends of the bill, to use the money which under its provisions is to be raised by tax to pay certain indebtedness of the said railroad company, in the expectation that thereby a consolidation of its road with the Utica and Black River Railroad may be affected. By this means it is hoped that the stock in the Black River and Morristown Railroad Company, to which the towns mentioned have subscribed, may be made more valuable.

I am of the opinion that the bill, if approved, would not justify such an expenditure of the money proposed to be raised.

In this view, the legislation sought would be of no avail.

If the bill does permit such an application of public funds, it seems to be in direct contravention of the Constitution, which provides that no town shall give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation.

GROVER CLEVELAND.

VETO, SENATE BILL No. 113, TO AUTHORIZE THE
VILLAGE OF FAYETTEVILLE TO PURCHASE A
FIRE ENGINE ON CREDIT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 21, 1883.* }

To the Senate :

Senate bill No. 113, entitled "An act to authorize the trustees of the village of Fayetteville to purchase a steam fire-engine and apparatus for the use of the fire department of said village, and to borrow money on the credit of said village for such purpose," is herewith returned without approval.

By reference to section 21 of chapter 482 of the laws of 1875, it will be seen that the authority is vested in the boards of supervisors to authorize villages in the several counties to do precisely the things mentioned in this bill. The act referred to was passed, as its title declares, "to confer upon boards of supervisors further powers of local legislation and administration," and with the intent that the matters therein specified, being of local interest and importance, should be disposed of by an authority nearer home than the Legislature of the State.

This intent accords with the letter and spirit of the Constitution, and with sound political principle.

With a statute so plain, and containing requirements so easy of fulfilment, I can hardly understand why so many bills of the kind under consideration should be introduced and passed.

The members of the boards of supervisors should not be allowed to shift the responsibility of increasing the taxes

of their constituents to the Legislature of the State. They should know whether unusual expenditures are necessary in their localities, and should be made answerable to their neighbors, for the economical and proper discharge of their duties as local legislators. If this were insisted upon, perhaps fewer schemes involving increased taxation would be inaugurated.

In this particular case I have before me the remonstrance of many of the best citizens of the locality against the passage of this bill.

GROVER CLEVELAND.

VETO, SENATE BILL No. 88, TO AUTHORIZE THE
VILLAGE OF MECHANICVILLE TO PURCHASE A
FIRE ENGINE AND ISSUE BONDS FOR THE SAME.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 21, 1883. }

To the Senate:

Senate bill No. 88, entitled "An act to authorize the president and trustees of the village of Mechanicville to issue the bonds of said village for the purchase of a steam fire engine and hose, and to provide for the payment of such bonds," is herewith returned without approval.

The objections to this bill are the same as those made to Senate bill No. 113, authorizing the village of Fayetteville to raise money for a like purpose.

The Board of Supervisors of the county of Saratoga has ample power to permit the people of the village of Mechanicville to increase their taxation for the purposes mentioned in this bill. If they desire to do so, application should be

made to such board, pursuant to section 26 of chapter 482 of the laws of 1875.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 58, TO REGULATE FARES
ON ELEVATED RAILROADS IN NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 2, 1883. }

To the Assembly :

Assembly bill No. 58, entitled "An act to regulate the fare to be charged and collected by persons or corporations operating elevated railroads in the city of New York," is herewith returned without approval.

This bill prohibits the collection or receipt of more than five cents fare on any elevated railroad in the city of New York, for any distance between the Battery and Harlem river, and provides that if any person or corporation operating such elevated railroads shall charge, demand, collect or receive any higher rate of fare, such person or corporation shall, in addition to all other penalties imposed by law, forfeit and pay to any person aggrieved fifty dollars for each offense, to be recovered by such person in any court of competent jurisdiction.

The importance of this measure and the interest which it has excited, has impressed me with my responsibility, and led me to examine, with as much care as has been possible, the considerations involved.

I am convinced that in all cases the share which falls upon the Executive regarding the legislation of the State should be in no manner evaded, but fairly met by the

expression of his carefully guarded and unbiased judgment. In his conclusion he may err, but if he has fairly and honestly acted, he has performed his duty and given to the people of the State his best endeavor.

The elevated railroads in the city of New York are now operated by the Manhattan Railway Company, as the lessee of the New York Elevated Railway Company and the Metropolitan Elevated Railway Company.

Of course whatever rights the lessee companies have in relation to the running and operation of their respective roads passed to the Manhattan Company under its lease.

The New York Elevated Railway Company is the successor of the West Side and Yonkers Patent Railway Company.

The latter company was formed under and in pursuance of an act passed on the 20th day of April, 1866.

The third section of that act provides that companies formed under its provisions "may fix and collect rates of fare on their respective roads, not exceeding five cents for each mile or any fraction of a mile for each passenger, and with right to a minimum fare of ten cents."

On the 22d day of April, 1867, an act was passed in relation to this corporation, which provides for the manner of constructing its road, the eighth section of which act reads as follows:

"The said company shall be authorized to demand and receive from each passenger within the limits of the city of New York rates of fare not exceeding, for any distance less than two miles, five cents; for every mile or fractional part of a mile in addition thereto, one cent. Provided that when said railway is completed and in operation between Battery Place and the vicinity of Harlem river, the said company may, at its option, adopt a uniform rate not exceeding ten cents for all distances upon Manhattan Island,

and may also collect said last named rate for a period of five years from and after the passage of this act."

It was further provided by section nine of this act that the said company should pay a sum not exceeding five per cent. of the net income of said railway from passenger traffic upon Manhattan Island, into the treasury of the city of New York, in such manner as the Legislature might thereafter direct, as a compensation for the use of the streets of the city.

In 1868 a law was passed supplementary to the act last referred to, by which the said company was authorized to adopt such form of motor as certain commissioners should, after due experiment, recommend or approve.

Specific provision was made in the act to carry out section 9 of the law of 1867, in relation to the payment of the five per cent. of the net income of the company into the treasury of the city.

Section 3 of this act contains the following provision :

"It shall be the duty of the constructing company aforesaid, before opening its railway to public use, to file with the Comptroller of the city of New York, in form to be approved by the mayor of the city of New York, its bond in the penal sum of \$100,000, conditioned upon the true and faithful payment of the revenue in amount and manner specified in the preceding section, and the payment thereof shall be the legal compensation in full for the use and occupancy of the streets by said railway as provided by law, and shall constitute an agreement in the nature of a contract between said city and Constructing Company entitling the latter or its successors to the privileges and rates of fare heretofore or herein legalized, which shall not be changed without the mutual consent of the parties thereto as aforesaid; and the mayor, on behalf of said city may, in case of default in payments as aforesaid, sue for and collect at

law any arrearages in such payment, and the claims of the city therefor shall constitute a lien on the railway of said company, having priority over all others."

The use of what are called dummy engines was afterwards authorized in the operation of said road by the commissioners above referred to.

The New York Elevated Railroad Company was organized under the general railroad law passed in 1850, and the laws amendatory thereof and supplementary thereto.

Within a short time thereafter the last named company became the purchaser under a foreclosure, and by other transfers of the railway and all the rights, privileges, easements and franchises of the West Side and Yonkers Patent Railway Company (the name of which had in the meantime been changed to the West Side Elevated Patented Railway Company of New York city).

We have now reached a point where the New York Elevated Railway Company, one of the lessors of the Manhattan Railroad Company, has succeeded to all the rights and property of the West Side and Yonkers Patent Railway Company.

By a law passed on the 17th day of June, 1875 (the railway still being unfinished), it is declared that the New York Elevated Railroad Company having acquired by purchase under mortgage foreclosure and sale and other transfer, all the rights, powers, privileges and franchises, which were conferred upon the West Side and Yonkers Patent Railway Company by the acts above referred to, is "hereby confirmed in the possession and enjoyments of the said rights, powers, privileges and franchises as fully and at large as they were so granted in and by the acts aforesaid to the said West Side and Yonkers Patent Railway Company.

The Court of Appeals, speaking of this law, uses the following language:

"The effect of this act was to secure to the Elevated Railroad Company all the rights, privileges and franchises of the West Side and Yonkers Patent Railway Company under the purchase by and transfer to it."

By the sixth section of this act, it is provided that the New York Elevated Railroad Company might demand and receive from each passenger on its railroad, not exceeding ten cents for any distance of five miles or less, and with the assent required by section 3 of the act of 1868, hereinbefore referred to, not exceeding two cents for each additional mile or fractional part thereof.

Another act was passed in 1875, commonly called the Rapid Transit Act, which provided for the appointment of commissioners, who, among other things, were authorized to fix and determine the time within which roads subject to the provisions of the act should be completed, together with the maximum rates to be paid for transportation and conveyance over said railways, and the hours during which special cars should be run at reduced rates of fare.

Commissioners were duly appointed by the mayor of the city of New York, as provided by this act, who fixed and determined the route of the road of the New York Elevated Railroad Company, and prescribed with the utmost particularity the manner of its construction, and thereupon deliberately agreed with said company that it should charge as fare upon trains and cars other than what were called by the parties commission trains and cars, for all distances under five miles not to exceed ten cents, and not to exceed two cents for each mile or fraction of a mile over five miles, until the fare should amount to not exceeding fifteen

cents for a through passenger from and between the Battery and intersection of Third avenue and One Hundred and Twenty-ninth street, and from and between the Battery and High Bridge not to exceed seventeen cents for a through passenger, and that for the entire distance from and between the Battery and Fifty-ninth street the fare should not exceed ten cents per passenger.

It was further agreed between the said company and the commissioners that commission trains should be run during certain hours in the morning and evening for the accommodation of the public and the laboring classes, upon which the fare should not exceed five cents from and between the Battery and Fifty-ninth street, nor any greater sum for any distance not exceeding five miles; that it should not exceed seven cents for a through passenger from and between the Battery, or any point south thereof, and the Harlem river, and that such fare should not exceed eight cents on such commission cars and trains from and between the Battery and High Bridge.

And it was further agreed by said company that when the net income of the road, after all expenditures, taxes and charges are paid, should amount to a sum sufficient to pay exceeding ten per cent. per annum on the capital stock of the company, that in such case and within six months thereafter, and so long as said net earnings amount to a sum sufficient to pay more than ten per cent. as aforesaid, the said company would run commission trains on its road at all hours during which it should be operated, at the rates of fare last mentioned.

Having thus completed an agreement with this company, the commissioners transmitted the same to the mayor of the city of New York, accompanied by a very congratulatory

report of their proceedings, whereupon the mayor submitted the same to the Board of Aldermen, by whom it was approved. This was in the latter part of 1875.

Since that time the New York Elevated Railroad Company, upon the faith of the laws which have been recited, and its proceedings with the commissioners, at a very large expense, has completed its road from the Battery to Harlem river, a distance of about ten miles.

The bill before me provides that notwithstanding all the statutes that have been passed and all that has been done thereunder, passengers shall be carried the whole length of this road for five cents, a sum much less than is provided for in any of such statutes or stipulated in the proceedings of the commissioners.

I am of the opinion that in the legislation and proceedings which I have detailed, and in the fact that pursuant thereto the road of the company was constructed and finished, there exists a contract in favor of this company, which is protected by that clause of the Constitution of the United States which prohibits the passage of a law by any State impairing the obligation of contracts.

But let it be supposed that this is not so, and that neither of these lessor companies are in any way protected from interference with their rates of fare, but that, on the contrary, they are subject to all the provisions of the general railroad act, under which they are both organized.

Section thirty-three of that act reads as follows:

"The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of freight, fare or other profits upon said road; but the same shall not, without the consent of the company, be so reduced as to produce with said profits less than ten per centum per annum on the capital actually expended; nor

unless on an examination of the amount received or expended, to be made by the State Engineer and Surveyor and the Comptroller, they shall ascertain that the net income derived by the company from all sources, for the year then last past shall have exceeded an annual income of ten per cent. upon the capital of the corporation actually expended."

Even if the State has the power to reduce the fare on these roads, it has promised not to do so except under certain circumstances and after a certain examination.

I am not satisfied that these circumstances exist, and it is conceded that no such examination has been made.

The constitutional objections which I have suggested to the bill under consideration are not, I think, removed by the claim that the proposed legislation is in the nature of an alteration of the charters of these companies, and that this is permitted by the State Constitution and by the provisions of some of the laws to which I have referred.

I suppose that while the charters of corporations may be altered or repealed, it must be done in subordination to the Constitution of the United States, which is the supreme law of the land. This leads to the conclusion that the alteration of a charter cannot be made the pretext for the passage of a law which impairs the obligation of a contract.

If I am mistaken in supposing that there are legal objections to this bill, there is another consideration which furnishes to my mind a sufficient reason why I should not give it my approval.

It seems to me that to arbitrarily reduce these fares, at this time and under existing circumstances, involves a breach of faith on the part of the State, and a betrayal of confidence which the State has invited.

The fact is notorious that for many years rapid transit was the great need of the inhabitants of the city of New

York, and was of direct importance to the citizens of the State. Projects which promised to answer the people's wants in this direction failed and were abandoned. The Legislature appreciating the situation, willingly passed statute after statute calculated to aid and encourage a solution of the problem. Capital was timid, and hesitated to enter a new field full of risks and dangers. By the promise of liberal fares, as will be seen in all the acts passed on the subject, and through other concessions gladly made, capitalists were induced to invest their money in the enterprise, and rapid transit but lately became an accomplished fact. But much of the risk, expense and burden attending the maintenance of these roads are yet unknown and threatening. In the meantime, the people of the city of New York are receiving the full benefit of their construction, a great enhancement of the value of the taxable property of the city has resulted, and in addition to taxes, more than \$120,000, being five per cent. in increase, pursuant to the law of 1868, has been paid by the companies into the city treasury, on the faith that the rate of fare agreed upon was secured to them. I am not aware that the corporations have, by any default, forfeited any of their rights; and if they have, the remedy is at hand under existing laws. Their stock and their bonds are held by a large number of citizens, and the income of these roads depends entirely upon fares received from passengers. The reduction proposed is a large one, and it is claimed will permit no dividends to investors. This may not be true, but we should be satisfied it is not, before the proposed law takes effect.

It is manifestly important that invested capital should be protected, and that its necessity and usefulness in the development of enterprises valuable to the people should be

recognized by conservative conduct on the part of the State government.

But we have especially in our keeping the honor and good faith of a great State, and we should see to it that no suspicion attaches, through any act of ours, to the fair fame of the commonwealth. The State should not only be strictly just, but scrupulously fair, and in its relations to the citizen every legal and moral obligation should be recognized. This can only be done by legislating without vindictiveness or prejudice, and with a firm determination to deal justly and fairly with those from whom we exact obedience.

I am not unmindful of the fact that this bill originated in response to the demand of a large portion of the people of New York for cheaper rates of fare between their places of employment and their homes, and I realize fully the desirability of securing to them all the privileges possible, but the experience of other States teaches that we must keep within the limits of law and good faith, lest in the end we bring upon the very people whom we seek to benefit and protect, a hardship which must surely follow when these limits are ignored.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 94, TO AUTHORIZE THE
STATE BOARD OF AUDIT TO HEAR THE CLAIM
OF EDWARD M. MOORE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 2, 1883. }

To the Assembly :

Assembly bill No. 94, entitled "An act to authorize the State Board of Audit to hear and determine the

claim of Edward M. Moore," is herewith returned without approval.

I am unable to see what good purpose this bill answers.

The law by which the Board of Audit is created provides that it shall be the duty of said board and it shall have power to hear all private claims and accounts against the State, with certain exceptions, and "to determine on the justice and amount thereof, and to allow such sums as it shall consider should equitably be paid by the State to the claimants."

The bill under consideration authorizes Edward M. Moore to present a claim to the board, which is a right he now has.

It further provides that "the State Board of Audit is hereby authorized to hear and audit said claim, and to award such compensation for said services as shall appear to be just and reasonable."

If this means that the Board of Audit shall merely fix the amount of compensation, the Legislature has, by this law, audited and allowed this claim to the extent of determining that something is due to the claimant; but the Legislature is prohibited from auditing or allowing any private claim or account against the State, by the Constitution.

If this is not the effect of the bill, I cannot see how the claimant's standing in the Board of Audit will be improved by its provisions.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 295, TO AUTHORIZE THE
COUNTY OF SCHUYLER TO BORROW MONEY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 13, 1883.* }

To the Assembly:

Assembly bill No. 295, entitled "An act to authorize the Board of Supervisors of the county of Schuyler to borrow money," is herewith returned without approval.

Chapter 482 of the laws of 1875 confers upon the several Boards of Supervisors the power and authority to purchase real estate and to erect thereon county buildings, and to borrow money on the county bonds, or other county obligations, for those purposes.

It is proposed, under this bill, to borrow money at a low rate of interest, and issue the obligations of the county for the same, and, with the money thus borrowed, to pay and retire a loan heretofore made by the State to the county for the erection of county buildings.

This amounts to merely changing the creditor and keeping the original loan on foot at a lower rate of interest. Any obligations of the county given on the substituted loan, will, I think, be given for the erection of county buildings as authorized by the statute above referred to, and may be issued by the Board of Supervisors without further legislative aid.

If there is any doubt on this subject, it might be well to proceed under the statutes passed in 1868, which especially provide for the issuing of new bonds to take the place of those outstanding, when by so doing a lower rate of interest is paid.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 135, TO AMEND CHARTER OF THE VILLAGE OF OSWEGO FALLS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 16, 1883.* }

To the Assembly:

Assembly bill No. 135, entitled "An act to amend chapter two hundred and thirteen of the Laws of eighteen hundred and sixty-six, entitled 'An act to incorporate the village of Oswego Falls,' and the several acts amendatory thereof," is herewith returned without approval.

This bill does not appear to have been drawn with the care which is necessary to make its provisions plain, simple and certain of execution.

Among other things, it serves to make the expense of repairs of sidewalks, the removal of snow and ice, and the abatement of nuisances, charges against the village, and also provides that such expense shall be collected from the parties owning or occupying the premises in front of or adjoining which the work is done.

The bill further amends the charter of the village by adding thereto a new section, which shall be known and designated as number forty-nine.

The charter now has a section numbered forty-nine, which contains important provisions, and which by the bill under consideration is not and ought not to be abrogated.

I am also informed that the authorities of the village who at first appeared anxious for the passage of the bill, have changed their minds since its introduction, and are now quite willing that it should not become a law.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 142, RELATING TO
REPRESENTATION IN THE BOARD OF SUPER-
VISORS OF FULTON COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 16, 1883.* }

To the Assembly:

Assembly bill No. 142, entitled "An act to amend an act entitled 'An act to equalize the representation in the board of supervisors of Fulton county,' passed March 13, 1873," is herewith returned without approval.

The original act, which is amended by this bill, provides that in addition to the supervisor by law elected in each of the towns in the county of Fulton, there shall be elected an additional supervisor for each two thousand and five hundred inhabitants that such town may contain, in excess of three thousand. Since the passage of that law, an amendment to the Constitution has prohibited the Legislature from passing a private or local bill providing for election of members of boards of supervisors.

The bill now presented to me amends the law of 1873 in such manner as to provide that there shall be an additional supervisor elected in the towns named for every twenty-five hundred inhabitants, and one for each fractional part thereof, which shall not be less than twelve hundred and fifty.

By the general law each town is entitled to elect one supervisor. Under the proposed bill, if the town contains twenty-five hundred inhabitants, two may be elected, and still another if it contains twelve hundred and fifty inhabitants in addition. It is apparent at a glance that the provisions of this bill are unnecessary and mischievous, beside

being directly in violation of the provision of the Constitution above referred to.

And yet the bill has been printed, and has presumably occupied some of the time of committees and of the Legislature.

It is quite certain that the time and attention which have been devoted to the passage of this bill might well have been bestowed upon measures more important and valuable.

GROVER CLEVELAND.

VETO, SENATE BILL, NOT PRINTED, TO AMEND
THE ACT FOR THE IMPROVEMENT OF JACKSON
AVENUE, LONG ISLAND CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 19, 1883.* }

To the Senate:

Senate bill, not printed, entitled "An act to amend chapter five hundred and ninety-three of the laws of eighteen hundred and eighty, entitled 'An act to improve Jackson avenue, in Long Island City,'" is herewith returned without approval.

The law which it is proposed to amend by this bill appoints three commissioners to macadamize a part of Jackson avenue, in Long Island City, and to make and repair contracts as the same may be necessary, at a total expense not exceeding eighteen thousand dollars.

The amendments consist in the alteration of every section of the original act, the addition of two more sections, an entire change in the character and amount of the work to be done, and an increase in the expense allowed for the same to the sum of fifty thousand dollars.

The bill before me expressly ignores the local authorities of the city within which the work is to be done, and in effect transfers their powers in such cases, as contained in the charter, to the commissioners named in the bill.

The charter of the city provides that work of this description can only be done by the common council when a petition is signed therefor by the owners of a majority in lineal feet of the land fronting on the street within which the improvement is proposed.

This provision, perhaps, furnishes the explanation for the effort made to procure legislation in aid of this project, instead of leaving its expediency to be determined by the people directly concerned, and who are to be taxed to pay for the work.

I have before me a remonstrance signed by many of the owners of lots fronting on Jackson avenue, protesting against the bill. This, and the consideration that it is directly opposed to my ideas of home rule, constrain me to withhold my approval from the proposed legislation.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 393, TO INCREASE THE
NUMBER OF NOTARIES PUBLIC.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 23, 1883. }

To the Assembly:

Assembly bill No. 393, entitled "An act increasing the number of notaries public in the counties of the State," is herewith returned without approval.

The number of these officers has from time to time been

increased until there are now in the State, exclusive of those which have been appointed on the application of banks, 12,524 persons holding commissions as notaries public. These, with the commissioners of deeds appointed in the several cities, and the other officers authorized by law to perform substantially the same duties, are undoubtedly more than sufficient, if properly selected and located, to answer all the needs of the public.

Officers who may administer oaths are too numerous, and oaths themselves are too lightly regarded.

Applicants for the office of notary public often seek the appointment merely to hold an office which they suppose they may have for the asking, and they frequently have neither the intelligence nor character to make them useful in the performance of their duties. Cases have lately occurred in the courts where guilty parties have escaped the penalty of perjury because a notary could not testify to the administration of a legal oath; and fraudulent transfers of property are aided by the ignorance or venality of these officers.

The Executive Department is overrun with the business incident to the appointment of notaries public and issuing their commissions; they are often recommended by members of the Legislature on purely personal or partisan grounds, and usually the Governor must be personally ignorant of their character or qualifications.

I should be glad to approve a bill reducing the number of these officers, and providing for their appointment by some local authority.

GROVER CLEVELAND.

VETO, SENATE BILL No. 134, TO AMEND THE ACT
AUTHORIZING GAS-LIGHT COMPANIES TO USE
ELECTRICITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 2, 1883. }

To the Senate :

Senate bill No. 134, entitled "An act to amend chapter 512 of the laws of 1879, entitled 'An act to authorize gas-light companies to use electricity instead of gas for the lighting of streets, public places and public and private buildings in cities, villages and towns within this State,' as amended by chapter 73 of the laws of 1882," is herewith returned without approval.

The amendment first proposed by this bill, provides that corporations formed for the purpose of manufacturing and using electricity for producing light, heat or power, shall not be confined in their operations to the county in which their certificate shall be filed.

It is evident that this contemplates the manufacture or generation of electricity, not only for lighting purposes, but for heat or power, and the transmission of the same by means of conductors to distant points.

This bill further authorizes said corporations to lay, erect and construct the necessary conductors and fixtures for transmitting and supplying electricity, over or under any public road, street or highway, or waters of the State, with the consent of certain local authorities. It also provides for the laying and construction of such conductors and fixtures, by such corporations, under or over private lands, subject to the rights of the owner to full compensation, which, if

it cannot be agreed upon by the owner and said corporation, shall be fixed by commissioners to be appointed by the County Court.

The transmission of electricity by means of wires stretched upon poles, has up to this time been confined to telegraphic and lighting purposes. And this has been regarded as dangerous and objectionable, at least, so far as these wires and poles run within the cities of the State.

On the 23d day of March, 1882, the Senate passed a resolution authorizing its committee on cities to investigate whether or not the laying of telegraph and electric light wires under ground was practicable.

The committee, after taking evidence on the subject, submitted a report, in which they speak of the wires and poles used by telegraph and electric light companies, in the following terms :

"Your committee believe that the testimony submitted herewith, conclusively shows that the time has arrived when it is the plain duty of the Legislature to arrest the growth and secure the removal from our streets of these structures, which, without exaggeration, may be termed public and private nuisances."

A bill is now pending in the Legislature based upon this report, providing that all telegraphic, telephonic and electric light wires and cables in incorporated cities having a population of five hundred thousand or upwards, shall, after the passage of this bill, be laid under the surface of the streets, and for the removal of existing wires and the poles sustaining the same.

The report and the bill above referred to, contemplate only the ordinary wires and poles used for telegraphic, telephonic and electric light purposes.

But the bill under consideration permits not only such

wires to be placed above the surface and in the streets, but also conductors and fixtures for transmitting such currents of electricity as may be necessary to produce heat or power. We have no hint in the bill what these conductors and fixtures may be, but it is entirely evident that they cannot be less dangerous and objectionable than the wires and poles now in use and characterized by the Senate committee as nuisances.

I am convinced that the safety and convenience of the people demand that the conductors and fixtures of the corporations mentioned in this bill should not be permitted upon or over the public streets.

Another fatal objection to this bill is found in the provision allowing the corporations therein named to enter upon private property, and erect and maintain their structures thereon, without the consent of the owner. It seems to me that this is taking private property, or an easement therein, with very little pretext that it is for a public use.

If a private corporation can, under authority of law, construct its appliances and structures upon the lands of the citizen without his consent, not only for the purpose of furnishing light, but in an experimental attempt to transmit heat and power, the rights of the people may well be regarded as in danger from an undue license to corporate aggrandizement.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL, NOT PRINTED, TO EXTEND
THE TIME FOR COLLECTION OF TAXES IN RICH-
MOND COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }
ALBANY, *April 2, 1883.* }

To the Assembly:

Assembly bill, not printed, entitled "An act to authorize the extension of the time for the collection of taxes in the county of Richmond," is herewith returned without approval. This bill is rendered unnecessary by chapter 147 of the laws of 1883, which provides for an extension of time for the collection of taxes in any of the towns of the State.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 291, RELATING TO
HOSPITAL AND OTHER ELEEMOSYNARY FUNDS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }
ALBANY, *April 5, 1883.* }

To the Assembly:

Assembly bill No. 291, entitled "An act for the benefit of hospital and other eleemosynary funds," is herewith returned without approval.

For about fifty years the law of the State has limited and restricted the purposes for which trusts might be created, the time for which property might be withdrawn from alienation, and the accumulation of property held in trust. Time has, I think, vindicated the wisdom of such

statutory limitations, and it is agreed that they are entirely in accord with the theory of our institutions.

This bill makes radical changes in the law, and permits trusts to be created for charitable, educational, eleemosynary, benevolent and humane objects, which depend entirely upon the terms of the instruments creating such trusts, without regard to the salutary restraints of existing laws. It seems to me that in the cases to which the bill applies the indefinite suspension of the power of alienation is allowed, and the accumulation of the increase of trust funds and property permitted to an extent which has in the past been regarded as mischievous.

No sufficient reason has been presented why we should abandon the settled and approved policy of the State on this subject.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 401, RELATING TO SALE
OF BURIAL GROUND IN THE TOWN OF PERRY,
WYOMING COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 6, 1883. }

To the Assembly:

Assembly bill No. 401, entitled "An act to authorize the supervisor of the town of Perry, in Wyoming county, to purchase lots of the trustees of Hope Cemetery, and to remove to and reinter therein the bodies now remaining in the old burial ground in the village of Perry, to sell said old burial ground, and to defray the expenses of

removing the bodies therefrom and re-intering the same in new grounds," is herewith returned without approval.

The old burial ground from which the bodies are authorized to be removed by the provisions of this act, I am informed, has been conveyed to the trustees of the village of Perry "to be used only as a burial place for the dead." The trustees thus owning or having the legal supervision of this cemetery lot, all that could be done under the bill can be done under and in pursuance of sections 23 and 24 of chapter 482 of the laws of 1875, if the permission so to do is granted by the board of supervisors, as provided in said sections.

The parties interested in the passage of this bill should apply to the board of supervisors of the county of Wyoming for the relief sought. That body has full power in the premises, and can better judge of the merits of the application than the Legislature.

GROVER CLEVELAND.

VETO, SENATE BILL, NOT PRINTED, TO EXTEND
TIME FOR PAYMENT OF CAPITAL STOCK OF
THE UTICA ICE COMPANY, LIMITED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,
ALBANY, April 6, 1883. }

To the Senate:

Senate bill, not printed, entitled "An act to extend the time for the full payment of the capital stock of the Utica Ice Company, limited," is herewith returned without approval.

By the petition asking for the passage of this bill, it appears that the Utica Ice Company, limited, was incorpo-

rated on the 7th day of April, 1881, under chapter 611 of the laws of 1875, with a capital stock of \$20,000. By the provisions of that act, one-half of said stock is to be paid in one year from the time of the incorporation of said company, and the other half within two years from that date, or the corporation shall be dissolved. It further appears that the company is unembarrassed and doing a prosperous business.

Our laws in relation to the formation of corporations are extremely liberal, and those who avail themselves of their provisions should be held to a strict compliance with their requirements. There is manifestly no propriety in the passage of a special act to relieve a private corporation and its stockholders, as proposed in this bill. If the capital already paid in is sufficient for its purpose, it may, I think, reduce its stock under section 15 of the act. In any event, the failure to pay in the stock within the time limited, only subjects the company to be proceeded against and dissolved after a judgment obtained against it, and renders the stockholders, until such payment, liable for all the debts of the corporation.

This company, and its stockholders, have assumed for their own benefit certain relations to the State, to the public and to their creditors; and these relations should not be disturbed.

If corporations are to be relieved from their defaults for the asking, their liability to the people with whom they deal will soon become dangerously uncertain and indefinite.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 253, TO AMEND THE
CHARTER OF CITY OF BUFFALO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 9, 1883.* }*To the Assembly :*

Assembly bill No. 253, entitled "An act to amend chapter five hundred and nineteen of the laws of eighteen hundred and seventy, entitled 'An act to amend the charter of the city of Buffalo,' passed April twenty-eighth, eighteen hundred and seventy, is herewith returned without approval.

The object of this bill is to entirely reorganize the fire department of the city of Buffalo.

The present department was established in 1880, under chapter 271 of the laws of that year, and its management and control are vested in three commissioners, who, pursuant to said law, were appointed by the mayor of the city.

The gentlemen thus appointed are citizens of unquestioned probity, intelligence and executive ability, and enjoy and deserve the respect and confidence of all their fellow-townsmen.

Having very recently had official relations with this department, I cannot but testify to its efficiency and good management, and the economy with which its affairs are conducted. And yet, before it has been three years in operation, it is proposed, by the bill under consideration, to uproot and sweep away the present administration of this important department, and venture upon another experiment. This new scheme provides for the appointment, by the mayor, on the first Monday in May, 1883, of a chief of the fire department, one assistant chief and two district

chiefs; the city is divided into two fire districts, and it is made the duty of the district chiefs to take the charge and management of all fires in their respective districts until the arrival of the chief or assistant chiefs.

I can see no reason for dividing, by law, the city into fire districts, unless it be to make new places to be filled by the city executive.

The provision that the district chief shall have charge and management of a fire in his district, until the arrival of his superior, gives excuse for the chief of another district, though first on the ground, to refrain from interference.

A fire department should be organized with a view to prompt and effective action upon a sudden emergency. Every member of the department should be, at all times, ready for service, and there should be no mischief invited, by rules too inflexible, as to who should have charge and management in time of danger to life and property.

Although the mayor of the city, under the provisions of the bill, has the absolute power of appointment to these offices, he may, in case of vacancy by death, resignation, removal or otherwise, make special appointments, until permanent appointments are made. This was evidently copied from the charter of 1870, which allowed the mayor to appoint fire superintendents, by and with the advice and consent of the common council. It was intended to permit the filling of a vacancy by the mayor during the time which should elapse before a successor could be confirmed by the council. But in a case where no confirmation is necessary, such a provision is needless, incongruous and mischievous. The mayor should be as well prepared to make a permanent appointment under this bill, in case of a vacancy, as a temporary one. This provision would seem to give him the power by calling an appointment a temporary

one, to retain the appointee as long as he sees fit, and, under the pretext of a permanent appointment, displace him by another without charges or an opportunity to be heard.

By section six of the bill an appeal is permitted from the decision of the mayor upon the trial of any of these officers, to the Supreme Court of Buffalo. There is no such court in existence.

But waiving further criticism of details, my attention is directed to section twenty of the bill, which, to the promoters of this measure, is undoubtedly its most important feature. It provides that immediately upon the appointment and qualification of the chief, the terms of the present commissioners shall cease and determine, and that the terms of office of all the other officers, firemen and employes shall also cease and determine, ten days thereafter. Great care is exercised to provide that the chiefs and all the firemen and employes appointed under the new scheme shall be discharged only for cause, and after due hearing and an opportunity for defense; but to those now in the service, numbering about two hundred drilled and experienced men, no such privileges are accorded.

The purpose of the bill is too apparent to be mistaken. A tried, economical and efficient administration of an important department in a large city is to be destroyed, upon partisan grounds or to satisfy personal animosities, in order that the places and patronage attached thereto may be used for party advancement.

I believe in an open and sturdy partisanship, which secures the legitimate advantages of party supremacy; but parties were made for the people, and I am unwilling, knowingly, to give my assent to measures purely partisan, which will sacrifice or endanger their interests.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 621, FOR AN ADDITIONAL PUBLIC BATH IN NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 12, 1883. }

To the Assembly:

Assembly bill No. 621, entitled "An act to provide for the construction and maintenance of an additional public bath in the city of New York," is herewith returned without approval.

I am informed by the mayor of the city of New York that this bill has been considered by the heads of the departments of the city government, and by them declared to be objectionable, for the reason that the legislation proposed deprives the city authorities of all voice concerning the necessity, location or expense of the bath.

If it does not now exist, authority should be conferred upon the local authorities of New York to enable the construction of public baths at the city's expense, whenever and wherever in their judgment the public good of the city requires.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 196, TO AUTHORIZE
THE COMPTROLLER TO COMPROMISE CLAIMS
AGAINST SURETIES OF FIRST NATIONAL BANK
OF BUFFALO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 16, 1883. }

To the Assembly :

Assembly bill No. 196, entitled "An act to authorize the Comptroller to compromise and settle claims against the sureties of the First National Bank of Buffalo," is herewith returned without approval.

The title of this bill defines it to be an act to authorize the Comptroller to settle certain claims. But the Comptroller is not mentioned in the bill itself, and the authority to settle and compromise the claims mentioned is conferred upon the State Treasurer, with the approval of the Attorney-General.

While this latter and complete inconsistency between the title of the bill and its enactments renders its disapproval necessary, I deem it not improper to add that in my opinion its purpose was objectionable.

The persons who seek to be relieved under this bill signed a bond to the State for the safe keeping and repayment on demand of certain moneys deposited in behalf of the State in the First National Bank of Buffalo.

The bank has failed and is unable to refund the State's deposits. The securities in the bond have thus become liable to pay the money, and I can see no reason why they should be relieved.

I am willing to do what I can to check the growing impression that contracts with the State will not be insisted

upon or may be evaded. The money deposited with the bank was public money belonging to the people, and I regard it the duty of all having the care of State affairs to see to it that no part is lost by an improper indulgence to those who have agreed that it should be safely kept.

GROVER CLEVELAND.

MEMORANDUM OF OBJECTION FILED WITH
APPROPRIATION BILL,—ITEM, FOR ESTAB-
LISHING BULKHEAD LINES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 16, 1883. }

To the Assembly :

A copy of a statement of objection to an item contained in Assembly bill No. 165, entitled "An act making appropriation for the support of government," is herewith respectfully transmitted, the statement having been appended to the bill at the time of its approval, pursuant to the provisions of the ninth section of article four of the Constitution.

GROVER CLEVELAND.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 16, 1883. }

The item of appropriation for the State survey contained in Assembly bill No. 165, entitled "An act making appropriation for the support of government," which reads as follows :

"And for establishing reference points by which to locate

bulkhead lines and grants of lands under water, one thousand three hundred dollars," is objected to and not approved.

I am not aware of any necessity for the work here proposed, but if it is necessary, manifestly the duty is one which properly belongs to the State Engineer and Surveyor.

My convictions against inaugurating a work of this character, and in this way, are strengthened by the experience of the State in the matters of the State survey and the Adirondack survey.

The State survey was established by an item in the appropriation bill of 1876, which appropriated \$20,000 "for making an accurate trigonometric and topographical survey of the State for the determination of State and county lines," and to locate at least one point in each county for the guidance of local surveyors. If the originators of this survey had in contemplation such an expensive and elaborate scheme as has been developed from the authority thus given, it is evident from the original law here referred to that such was not the intention of the Legislature. This seems to be confirmed by the fact that the succeeding Legislature, of which the same Senate was a part, made no provision for continuing the survey, and the following year an appropriation for that purpose was only made upon considerations which appear in the following memorandum filed by Governor Robinson, with his approval of the measure:

"The State survey, as originally proposed, contemplated a work of immense magnitude, of unlimited expense, and of little, if any, practical value to the people who were to pay for it. So long as it presented this appearance, I embraced every proper opportunity of placing upon record my earnest disapproval of it. I am now informed that the visionary and objectionable views originally entertained have been wholly abandoned, and that instead of surveying the whole State, it is proposed simply to fix at small expense a few

points which may hereafter be used by any counties, towns or individuals desiring to make surveys for themselves in accordance with the new system. The bill is approved for the reason that it is in harmony with this greatly modified and unobjectionable plan."

That the promoters of this scheme have disappointed the expectations of my predecessor is shown by the fact that since it was made \$76,700 have been appropriated, and the item of this year carries it to \$92,500, making an aggregate cost of \$118,300, while in half the counties of the State nothing has been done. I have approved the appropriation of \$15,800 in the bill under consideration with great reluctance, and only for the purpose of providing means to enable the accurate fixing, as was originally proposed, of some point or line in each county for the guidance of local surveyors. With this sum and the remainder of last year's appropriation remaining unexpended, I shall insist that this work shall be fully completed.

The appropriation of \$2,500 to complete the Adirondack survey is approved, since by law that work must terminate during the next fiscal year. It originated in much the same way as the State survey, and has cost, exclusive of the amount paid for printing the reports, \$77,275. It is for the people to judge whether any public good has been served by this expenditure.

The cost of printing the reports of these surveys has been scandalously large, and I am constrained to here express my regrets that the Legislature has, at its present session, ordered, by resolution with which I have not the power to interfere, a reprint of certain of these books at an expense of at least \$15,000.

The aggregate cost of these two surveys to date, including printing, exceeds a quarter of a million of dollars, a

sum to my mind wholly disproportionate to the value of the practical results obtained, and I cannot believe that they would have been ordered if the Legislatures which originated them had understood that they were to be developed into regular departments of the State government, calling for a large annual outlay of the public funds for support.

In the light of such experience, I am unwilling to give my assent to an appropriation which has the appearance of being the initiative of a similar scheme of indefinite duration and unknown expense.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 158, TO INCORPORATE
THE OATKA HOSE COMPANY AT LE ROY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 20, 1883. }

To the Assembly :

Assembly bill No. 158, entitled "An act to incorporate the Oatka Hose Company of Le Roy, New York," is herewith returned without approval.

By chapter 397 of the laws of 1873, ample provision is made for the creation of corporations such as is proposed in the bill. I can see no reason for a special enactment in this case, unless the purpose is to make this hose company independent of the village authorities where it is to be located. This, of course, should not be permitted.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 243, TO AUTHORIZE
THE COMPTROLLER TO SELL A JUDGMENT
OBTAINED BY LOAN COMMISSIONERS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 20, 1883.* }

To the Assembly:

Assembly bill No. 243, entitled "An act to authorize the Comptroller to sell a judgment obtained by the loan commissioners of Delaware county, against David Horton," is herewith returned without approval.

This bill originates in the desire of a certain judgment creditor of David Horton, to procure the judgment owned by the State, to aid him in the collection of his debt. If the judgment is of value, there seems to be no good reason why it should not be enforced for the benefit of the State, in the ordinary way.

I have full faith in the care and caution of the Comptroller; but there is no guaranty that if this bill becomes a law, a sum will be offered for which the judgment should be transferred, in which case its enactment will be useless.

If it is thought best to dispose of this judgment, there should be a sum fixed in the bill based upon an offer made, upon the payment of which an assignment of the same should be directed.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 720, TO SELL AND
DIVIDE CHURCH PROPERTY IN THE TOWN OF
KENDALL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 23, 1883.* }

To the Assembly:

Assembly bill No. 720, entitled "An act to sell and divide the property of the First Congregational and First Baptist society of the town of Kendall, in the county of Orleans," is herewith returned without approval.

The church property mentioned in this bill has not been used by the church society to which it belongs for a number of years, and the said society has, I am informed, ceased to act in its corporate capacity; but it is represented that there is at least one of its trustees living in the county of Orleans. This seems to be precisely one of the cases contemplated by chapter 424 of the laws of 1872, which provides for the sale and disposition of church property when any religious society, incorporated by law, shall cease to act in its corporate capacity. Under that statute the facts are presented to the Supreme Court, which, if it shall deem proper, may order a dissolution of such religious society, and a sale of its property, and direct in what manner the proceeds of such sale shall be applied.

Instead of pursuing this method, which gives opportunity for the protection of all interest in the property, it is sought by this bill to authorize the trustees or trustee of this church to convey its property to the town of Kendall, and if there are no debts against the society, to so convey the same for a mere nominal sum.

This seems to be a very favorable scheme for the town

of Kendall, but no protection seems to be afforded to any other rights.

The power of the Legislature to authorize a trustee to dispose of property, in direct contravention of his trust and for a nominal consideration, to a beneficiary selected by the Legislature, should not at this day be even suspected.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL, NOT PRINTED, TO EXTEND
TIME FOR COLLECTION OF TAXES IN TOWN OF
HORNELLSVILLE. .

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1883. }

To the Assembly:

Assembly bill, not printed, entitled "An act to authorize the extension of the time for the collection of taxes in the town of Hornellsville, in the county of Steuben," is herewith returned without approval.

This bill extends the time for the collection of taxes in the town of Hornellsville to the first day of May, 1883.

This is entirely unnecessary, because by chapter 147 of the laws of the present session of the Legislature, the time for the collection of taxes in all the towns of the State was extended to the first day of June, 1883.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 407, RELATING TO
VILLAGE OF LYONS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1883. }

To the Assembly :

Assembly bill No. 407, entitled "An act to revise and amend the law in relation to the village of Lyons, in the county of Wayne," is herewith returned without approval.

This bill does not, by its terms, purport to amend any other law, but appears to be an entirely new charter, containing some of the provisions embraced in previous statutes relating to the corporation of the village of Lyons, and some of the provisions of the general village law. There are also found in this bill the strikingly original and preposterous features usually discovered in such contrivances, which, if not violations, are certainly invasions of that clause of the constitution which prohibits the passage of a local or private bill incorporating villages.

I shall only call attention to a few sections of this charter, furnishing abundant reasons for my disapproval.

The first section provides that the corporation may, with the approval of the trustees and consent of a majority of the taxpayers voting at a village meeting, receive by gift, grant, devise, bequest or purchase, real or personal property in fee or in trust, for such time and purposes as shall be specified in the instruments creating the trust.

This permits this village to acquire and hold property of any kind and amount, for purposes in no way connected with the ordinary objects of the corporation. It also permits the holding of such property in trust without any reference to the limitations of the Revised Statutes in rela-

tion to the creation of trusts, thus substituting the terms of the instrument creating the trusts for the law of the State.

Section eight provides that special meetings of the board of trustees at which every member is present, may be held without special notice or delay; and that a written admission of such notice and waiver of delay, shall, in those particulars, be equivalent to personal attendance; but section eleven declares that a majority of the board of trustees shall constitute a quorum for the transaction of business.

It might well be a subject of speculation whether or not the equivalent of personal attendance, afforded by the admission of service and waiver of delay, would be counted in making up this quorum. If so, the attendance thus represented might, without difficulty, secure a hearing upon the matters discussed at such meeting.

By section thirteen the trustees of the village are given power at all times to arrest or cause to be arrested, by any person, and without process, any and all criminals, as well as vagrants and disorderly and drunken persons; and if an inhabitant of the village shall refuse to aid in making such arrest upon the command of any trustee, he shall be subject to a fine not to exceed twenty-five dollars, and imprisonment till the fine be paid, not exceeding thirty days.

Without analyzing these startling provisions, it is sufficient to say that they do violence to all preconceived ideas touching the right to arrest, and the protection of the rights of the citizen.

Section twenty-five provides that the trustees may reduce or release any general village tax, assessed against any person whose age or infirmity and straitened circumstances, shall in the unanimous judgments of all the trustees, entitle him or her to such relief.

The power to tax should be exercised in such a manner as to do exact justice to all who have to bear its burdens, and none should be released in case of supposed hardship, and their share of taxation exacted from their neighbors.

It is provided in section thirty-four, that no payments to the treasurer shall discharge, in any degree, any obligation or indebtedness to said village, unless a receipt therefor, given by the treasurer, shall, within five days of its issue, be filed with the village clerk.

It must be conceded that a law declaring a debt not discharged by payments unless the receipt therefor is filed in a particular place, would tend to great injustice, and must be considered an unnecessary and unjustifiable restriction of the ordinary rules of law.

There are other sections of this charter which might be criticised, to which I will not refer. It is quite apparent that something should be done to prevent the introduction or, at any rate, the passage of such bills as this. They seem often to be prepared without any care, or without any appreciation of the evils to be remedied, or the manner of accomplishing improvements. Once here, they attract but little attention, because they are supposed to be of no importance to the Legislature, being local in their nature. And then they are good naturedly allowed to pass and to reach the Executive, a mass of impracticable inconsistencies and incongruous and useless crudities, which, if allowed to go upon our statute books, would be a disgrace to the State and the law-making power.

I am of the opinion that villages that have special charters which they claim to amend, should be driven to reorganize under the general law, which if in any way deficient should be amended to reach all reasonable needs.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 360, FOR RELIEF OF
SURVIVING MEMBERS OF FIRST REGIMENT,
N. Y. MEXICAN VOLUNTEERS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 25, 1883. }

To the Assembly:

Assembly bill No. 360, entitled "An act for the relief of surviving members of First Regiment, New York Mexican Volunteers," is herewith returned without approval.

This bill provides that the sum of twelve dollars per month shall be paid, in quarterly payments, for the term of two years, to every person who shall appear, on due evidence, to have been a member of the First Regiment of New York Volunteers, commanded by Colonel Ward B. Burnett, in the war between the United States of America and the Republic of Mexico, and residing in this State at the time of the passage of said bill. The sum of fourteen thousand nine hundred and seventy-six dollars, or so much thereof as may be necessary, is appropriated for the purpose mentioned in the bill.

I am by no means certain that the legislation thus proposed involves a correct principle, or that the appeal on which it rests should be answered by favorable action. Without regard, however, to the propriety of awarding the relief sought, but as a question of principle, examination of former legislation on the subject will furnish proof that enough has been done in this direction, and fully demonstrates that justice to the taxpayer should replace the generosity of the State.

By chapter 508 of the laws of 1851, fifteen thousand

dollars per annum for two years thereafter was appropriated for the purpose of paying the members of this regiment the sum of twelve dollars each month.

By subsequent legislation appropriations have been made to the members of the regiment as follows :

In the year 1862, \$288 ; in 1870, \$12,000 ; in 1871, \$5,000 ; in 1875, \$5,000 ; in 1876, \$2,500 ; in 1877, \$1,888 ; in 1878, \$3,638.

After the donation of more than \$60,000 to this regiment from the funds of the State, as above indicated, it seems to me further relief ought not to be insisted on.

GROVER CLEVELAND.

MEMORANDUM FILED WITH SENATE BILL NO. 234,
INCREASING THE NUMBER OF JUSTICES OF
THE SUPREME COURT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 27, 1883.*

[Filed with Secretary of State.]

I am not willing to approve Senate bill No. 234, entitled "An act to provide for organizing in the Supreme Court five general terms thereof, and for the election of justices of that court in addition to those now in office," for the reason that I do not believe the number of additional judges provided for in said bill is necessary, and because I am satisfied that the increase of taxation which it involves, is not justified.

But I think an increase of judges in some of the districts of the State is necessary and proper, and in view of

the fact that there is a question as to whether the constitutional amendment can be acted on by the Legislature, except at its present session, and the further fact that there seems to be no prospect that any other measure on the subject can be passed, at this time, I have concluded to allow the bill to become a law by the lapse of ten days from its presentation to me, pursuant to the provision of the Constitution.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 437, TO AUTHORIZE
BOARD OF CLAIMS TO HEAR THE CLAIM OF
VINCENT CONKLING.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 30, 1883. }

To the Assembly :

Assembly bill No. 437, entitled "An act authorizing the board of claims to hear and adjust the claim of Vincent Conkling, of Horseheads, New York," is herewith returned without approval.

It is expected that the court or board recently established to hear and determine claims against the State, will proceed according to the rules of law, and that no citizen will be prevented from presenting his complaint. I cannot believe that any new statute is necessary to secure this right. Whether the complainant succeeds in establishing any liability or not, depends upon considerations, which, under the Constitution and laws, should not be interfered with by the Legislature.

I have before me a decision of the Canal Appraisers

denying for very good reasons, the claim of the Port Byron free school district, which I suppose, was based upon the same facts as the claim mentioned in the bill under consideration.

If this be true, the claimant ought not to recover in any event.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 508, RELATING TO
HIGHWAYS IN WHICH TWO OR MORE TOWNS
ARE INTERESTED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 30, 1883.* }

To the Assembly :

Assembly bill No. 508, entitled "An act to provide for laying out, altering and improving highways in which two or more towns are interested," is herewith returned without approval.

This bill provides that twelve freeholders may apply in writing to the highway commissioners of the town in which they live, for the institution of proceedings for locating, opening and constructing any new highway, or for the change of location, or improving of any existing highway, which is located in part or wholly within any town or towns other than the one in which they live.

It is further provided that on receiving such application, the commissioners to whom it is addressed shall apply to the county court, upon notice to the commissioners of highways in the several towns interested in the improvement, and that after due hearing, the court shall appoint certain

commissioners; and if, after examination, they shall determine that the work should be done, it shall be executed by said commissioners. The expense of the improvement, including the cost of land taken, it, is provided, shall be apportioned by said commissioners among the several towns in the county, according to the benefits received, and the part of the cost and expense assessed on each town shall be added, by the Board of Supervisors, to the amount of money to be collected from said town for town expenses.

It will be observed that no part of the highway to be located, opened, constructed, changed or improved, need be within the town where the persons applying for the work to be done reside, and that the commissioners of highways of the town within which the improvement is made, are not the ones who institute the proceedings. They are simply notified that within their town the commissioners of some other town are taking steps to construct, locate, open, change or improve a highway. The discretion which they should exercise for the protection and welfare of the people who elected them, is displaced by the order of a county judge and the determination of commissioners of his creation. The taxpayers may see extensive and costly work going on in their town, against their protest, and which they may deem entirely needless, but for which they must pay such sum as strangers having the work in hand shall determine. There is no participation by any town officer or resident taxpayer either in the work or in fixing the amount of taxation. Twelve freeholders of perhaps a distant town, and not necessarily within the same county, declare, under oath, in an application to the highway commissioners of the town of their residence, that this work is necessary and important to them and other inhabitants of their town, in facili-

tating travel, and the transportation of farm produce and other property, and the proceeding is set on foot and carried to its conclusion with no right of appeal on the part of those whose town is invaded, and whose taxes are increased without their consent, for the benefit of non-resident freeholders.

A proposed law should be judged by what it will permit, and not by its probable operation.

Measured by this standard, this bill utterly ignores the idea of home rule and the right of the people to regulate the affairs of their locality; and in its principles and details is thoroughly bad and vicious.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 641, FOR IMPROVEMENT OF A HIGHWAY IN WASHINGTON COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 30, 1883.*

To the Assembly:

Assembly bill No. 641, entitled "An act for the improvement of the highway between Thompson's mill and Fort Miller village, in Washington county," is herewith returned without approval.

This bill appropriates the sum of \$5,000 for the purpose of raising the road bed of the highway between Thompson's mill and Fort Miller village, to such a height as shall prevent the overflow of the said highway, from the Hudson river, occasioned by raising the Schuylerville dam in 1874, and authorizes the Superintendent of Public Works to make such improvement.

It seems that a bill for the same purpose has, at least once before, been passed, and failed to receive executive approval, and I think the work is such as the State should not be called on to do. If the cause of the bad condition of the highway is the building of a dam in 1874, the relation between cause and effect seems somewhat remote, in point of time.

And I am further of the opinion, that a fatal objection to the bill is found in the provision of the Constitution, which declares that the Legislature shall not pass a private or a local bill for laying out, opening, altering, working or discontinuing roads, highways or alleys.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 661, BOARD OF CLAIMS
TO HEAR CLAIM OF CLINTON COUNTY FOR
EXPENSES IN THE MATTER OF HENRY KING,
A CONVICT MURDERER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 30, 1883. }

To the Assembly:

Assembly bill No. 661, entitled "An act to authorize and empower the State Board of Claims to hear, audit and determine the claim of Clinton county for moneys expended in the trial and execution of convict Henry King, for crime committed during his imprisonment in Clinton prison, and to make award therefor," is herewith returned without approval.

I deem this bill entirely unnecessary ; and the provision

authorizing and requiring the board to hear and adjust said claim, and award the amount thereof, or such sum as the board shall consider equitable and just, is very objectionable as a legislative determination that some compensation should be awarded to the claimant.

GROVER CLEVELAND.

VETO, SENATE BILL No. 229, RELATING TO
POWERS AND COMPENSATION OF COUNTY
SUPERVISORS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }
ALBANY, April 30, 1883.)

To the Senate :

Senate bill No. 229, entitled "An act to amend chapter fifty-eight of the laws of eighteen hundred and eighty-two, entitled 'An act to amend chapter four hundred and eighty-two of the laws of eighteen hundred and seventy-five, entitled 'An act to confer additional powers of local legislation and administration and to regulate the compensation of supervisors,'" is herewith returned without approval.

This bill purports to amend section 8 of chapter 482 of the laws of 1875; and I think its title should have so expressed its object.

But aside from this error or informality, a more serious objection is found in the fact that the amendment made by this bill to the law of 1875, excepts the county of Monroe from the provisions in said section contained, fixing the compensation of supervisors. All previous laws regulating such compensation are repealed, and I cannot find

that the pay of the supervisors of Monroe county is fixed by any other subsequent statute.

If, as I suppose, there is no such statute, the effect of the proposed legislation would be to except the supervisors of Monroe county from the operation of the only statute by virtue of which they are entitled to compensation for their services.

There are now no less than six counties excepted from the general statute of 1875, fixing the amount to be paid to supervisors, and special statutes have been passed on this subject applicable to such counties. I think no more should be excepted, unless good reasons exist therefor. Uniformity of laws touching this matter certainly is desirable, since it avoids uncertainty and confusion.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 186, REQUIRING
ALBANY COUNTY CLERK TO FILE CERTAIN
CERTIFICATES WITH THE CITY ASSESSORS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }
ALBANY, May 2, 1883. }

To the Assembly:

Assembly bill No. 186, entitled "An act requiring the clerk of the county of Albany to file certificates of the sale and transfer of all real estate in the city of Albany with the assessors of said city," is herewith returned without approval.

This bill provides that for each certificate filed with the assessors as therein directed, the county clerk shall receive

the sum of twenty-five cents. The object of filing such certificates is to give the assessor better means of information as to the ownership of property upon which the taxes of the city are to be assessed. This purpose is a proper one, and the expense attending it, under the provisions of the proposed bill, would not be very great.

But the new charter of the city of Albany, which has taken effect since the introduction of this bill, increases the compensation of the assessors, and provides them with a clerk, who can easily and without additional expense procure by a daily examination at the clerk's office, the information for the use of the assessors, which is contemplated in the proposed bill.

Under such circumstances I am of the opinion that the bill is unnecessary, and the expenditure which it involves not justified.

GROVER CLEVELAND.

SPECIAL MESSAGE, RELATING TO THE OFFICE OF COMMISSIONER OF IMMIGRATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 4, 1883. }

To the Senate:

I deem it my duty to remind you of the importance of giving effect to the law lately passed by the Legislature "to amend the law relating to alien immigrants, and to secure an improved administration of alien immigration."

This statute was the result of investigation which demonstrated that the present management of this very important department is a scandal and a reproach to civilization.

The money of the State is apparently expended with no regard to economy, the most disgraceful dissensions prevail among those having the matter in charge, barefaced jobbery has been permitted, and the poor emigrant who looks to the institution for protection, finds that his helplessness and forlorn condition afford the readily seized opportunity for imposition and swindling.

These facts lift the efforts to reform the management above partisan considerations, and make the cause one in which every right-minded man should be enlisted, and one in which those chosen to protect the rights and the honor of the people of the State should gladly co-operate.

The law lately passed, it is admitted, seeks in a practical way to remedy the evils referred to.

In the enforcement of this law, it became my duty to send to the Senate, for its confirmation, the name of a person who should act as commissioner, and who should have charge of the important matters provided for.

This I have done. In the discharge of this duty I was fortunate enough to be able to present the name of a citizen of the State, of conceded integrity, ability and administrative capacity, who enjoys the respect and esteem of all who know him, and whose benevolent nature would insure the protection and kind care of the destitute and friendless strangers who should be put in his charge.

But the unmistakable indications are that in its closing hours the Senate will refuse to confirm his appointment and thus continue the present scandals and abuses.

Some of those now in charge of this department and their beneficiaries are on the ground and about the halls of legislation, seeking to retain their control and their abused advantages.

The refusal to confirm the appointee is not based upon any allegation of unfitness, nor has such a thing been suggested. It concededly and openly, as I understand the situation, has its rise in an overweening greed for the patronage which may attach to the place, and which will not be promised in advance, and in questionable partizanship, which is insisted on, at the expense of important interests.

There has not been a reason suggested why the name of the appointee should be withdrawn, and I should be unjust and derelict in my duty if I should pursue that course. The Senate is reminded, too, that the present situation of affairs precludes my submitting another name if I desired.

I am profoundly sensible of the absolute power and right of the Senate in the premises, and do not seek to question it even in this case. Every member knows the motives for his conduct, and must justify them to his constituents.

The fact remains, however, that a captious opposition to the execution of the best remedial law of the present session of the Legislature perpetuates the oppression of the immigrant and the practice of unblushing speculation. I have endeavored to co-operate with the Senate in supplementing the passage of the law, by putting the machinery in motion for its execution; and I may, perhaps, be allowed to express the hope that its operation may not be defeated. If it is, the responsibility must rest where it belongs.

GROVER CLEVELAND.

MEMORANDUM FILED WITH SENATE BILL No. 125,
TO AMEND LAW PROVIDING FOR THE INCORPORATION OF FIRE INSURANCE COMPANIES.
NOT APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1883. }

[Filed with Secretary of State.]

Memorandum filed with Senate bill No. 125, entitled "An act to amend chapter 466, of the laws of 1853, entitled 'An act to provide for the incorporation of fire insurance companies.'" Not approved.

This bill provides for a relaxation of the present law in regard to the securities in which fire insurance companies shall be permitted to invest their funds.

I think the change proposed is in the wrong direction, and that too much care can hardly be exercised to protect the interests of policyholders in institutions of this kind.

If any change is made as to the securities to which these companies may invest their funds, such securities should be specifically stated in the statute, and not left to the approval of the Superintendent of the Insurance Department.

The people should have an opportunity to learn by an inspection of the law, the character of the investments which corporations, so closely connected with their interests, are permitted to make.

Because I have not been able to discover that any good will result from the legislation proposed, to those who most need protection, and because, on the contrary, I fear that if this bill should become a law, important interests might be endangered, I am constrained to withhold my approval from the same.

GROVER CLEVELAND.

MEMORANDUM FILED WITH ASSEMBLY BILL No.
904, TO AMEND THE CODE OF CIVIL PRO-
CEDURE. NOT APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1883. }

[Filed with Secretary of State.]

*Memorandum filed with Assembly bill No. 904, entitled "An act
to amend the Code of Civil Procedure." Not approved*

This bill changes the law in regard to the publication of the reports of the Court of Appeals.

The statute now in force directs that contracts for such publication shall be entered into by the Secretary of State, Comptroller and State reporter, in behalf of the State, extending over a term of three years.

The bill under consideration provides that contracts for five years shall be made for the publication of these reports, on behalf of the State, by the Court of Appeals, or by such members or officers of that court as it shall designate for that purpose.

It seems to me that the authority to make these contracts, on the part of the State, is very properly lodged, as a matter of business, in the two State officers named in the law now in force and the State reporter. It is apparent, I think, that the latter officer is, or should be, a very useful and important member of the contracting body. But by the proposed law he has no part in the matter, and the power to make the contracts is left, in a very indefinite way, to the Court of Appeals or some members or officers thereof.

My attention has not been called to any great abuses

which exist under the present mode of doing this business; I have no assurance that the Court of Appeals desire to be invested with this contracting power; the paternity of the proposed bill seems somewhat obscure, and I am not convinced that any certain benefit would result from a change in the existing law on this subject.

Under such circumstances I deem it my duty to disapprove the legislation proposed.

GROVER CLEVELAND.

MEMORANDUM FILED WITH ASSEMBLY BILL No.
592, RELATING TO BANKS, BANKING AND TRUST
COMPANIES. NOT APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 19, 1883. }

[Filed with Secretary of State.]

Memorandum filed with Assembly bill No. 592, entitled "An act to amend chapter four hundred and nineteen of the laws of eighteen hundred and eighty-two, entitled 'An act to revise the statutes of this State relating to banks, banking and trust companies.'" Not approved.

I have listened to the arguments of the friends of this measure, and am still convinced that the present law should not be changed in the manner proposed.

The bill before me provides that savings banks may invest the money of depositors in bonds and securities which are excluded by the present carefully prepared statutes regulating this subject. Among other things, it permits the investment of such funds "in other good securities

(excepting bills of exchange, promissory notes, deposits of personal property, and stocks to which by law the personal liability of stockholders attaches) which may be approved by the Superintendent of the Banking Department, the Governor, Comptroller and State Treasurer, or a majority of them."

It must be conceded, I think, that no absolute certainty attends the judgment of men in relation to the matter of good securities. The State officers mentioned in the bill should not be burdened or intrusted with this important duty.

I see no provision in the bill by which any security can be withdrawn from the list if once approved by these officers, even though it may become unsafe or worthless as an investment.

Considerations have been earnestly urged upon me touching the ability of savings banks to pay a fair interest to depositors, with the present limitations upon the character of their investments.

But I am firmly of the opinion that these institutions are, as their name implies, a place of deposit for the savings of those among the poor and laboring people, who see the propriety of putting aside a part of their earnings for future need, or as the beginning of an accumulation. Such depositors are not, and should not be, investors seeking, as a paramount purpose, an income by way of interest on their deposits. When they come to that, there are other instrumentalities which should be employed.

Absolute safety of the principal deposited is what the patrons of savings banks should seek; and any governmental control over these institutions should, first of all, be directed to that end.

I am not satisfied that this is done, when State officials, already charged with onerous duties, are called to decide upon the value of proposed securities, and when the safety of deposits is left to their determination, and the care of directors and trustees often tempted to speculative ventures, beyond their power to resist.

A due regard to the protection of a class of citizens which should especially deserve the care of the State, requires, I believe, that the institutions having their savings in charge should be limited in the use of such deposits to investments described in the law, and which as nearly as possible insure absolute exemption from loss.

I am unwilling to assent to the increased risk which, I am convinced, lurks in the provisions of the proposed bill.

GROVER CLEVELAND.

MEMORANDUM FILED WITH ASSEMBLY BILL No.
801, RELATING TO STREET RAILROADS. NOT
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 29, 1883. }

[Filed with Secretary of State.]

Memorandum filed with Assembly bill No. 801, entitled "An act to provide for the construction, maintenance and operation of street railroads in cities, towns and villages." Not approved.

I have no doubt that a general law providing for the construction of street railroads, should be enacted; but the provisions of this bill are such, and my conviction of its questionable designs is so well settled, that I have determined to refuse to approve the same.

From its title, it appears to be a scheme for the construction, maintenance and operation of street railroads in all the cities, towns and villages of the State.

And yet when any streets are excepted from the operation of this act, they are streets in the city of New York. Whenever any provision is made for compensation for the use of streets, they apply alone to that city. It is only in the city of New York that corporations operating street railroads may, by the terms of this bill, be obliged to pave and keep in permanent repair any portion of the street between and along its tracks; and one of the limitations of the time within which in a certain case, a railroad is to be commenced and completed, is confined to railroads to be constructed in that city. Undoubtedly the provisions of the bill which are suspected or obscure, were inserted to meet the wants of New York corporations, and in all the discussion to which I have listened, this measure has been treated as though its operation concerned solely the city of New York.

Perhaps none of these things render the bill under consideration invalid, and yet they furnish substantial objections, and give rise to questions of much importance to other cities in the State. It cannot be difficult to frame a bill which in spirit, as well as in strict construction, would be a general law, protecting all localities alike, and avoiding the evils sure to follow a furtive attempt, under the guise of a general statute, to answer only private and local purposes.

The Constitution of the State prohibits the passage by the Legislature of any private or local bill "granting to any corporation, association or individual the right to lay down railroad tracks."

It also declares that the Legislature shall pass general laws required for such cases; and it provides that "no law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad, be first obtained."

The intent and purpose of this limitation is apparent. The streets and highways of a city, town or village, are under the control and charge of local authorities, as agents of the people of the localities, and to be managed and regulated for their benefit. It manifestly should be necessary, before such streets and highways can be used for any other than their ordinary purposes, that the consent of such local authorities be obtained.

But the owners of the property bounded by such streets and highways as are to be put to this new use, are very properly supposed to retain a certain interest or easement in the same, which they have never surrendered to any local authority, and which involves their rights, their convenience and their comforts as citizens. It is then, in exact accordance with the spirit of our institutions, that before the streets fronting their dwellings and premises should be incumbered and interrupted by the tracks of a street railroad, their wishes should be consulted and their consent obtained; and in order to prevent a captious opposition from defeating a desirable improvement, it is provided that the consent of the majority in value of such owners shall be sufficient.

It is here suggested that the object of this constitutional

limitation is not accomplished if the owners of property bounded by such streets can be concluded by the consents of prior owners and occupants, to which they are in no way privy, or of which they have no knowledge.

The constitution, it will be seen, declares that no law shall authorize the "construction or operation" of a street railroad (and not the formation of a company for that purpose), *except upon the condition* that the consents spoken of "be first obtained." This language certainly conveys the idea that the grant is to contain this condition, to be thereafter performed, before the authority to construct or operate the road shall be complete.

Section six of the bill now before me relates to existing railroad companies, and confers upon them the benefits of its provisions in these terms :

"Any existing railroad company, organized under and pursuant to the laws of this State, may extend its road and construct branches therefrom through, and construct and operate a railroad upon any street, avenue, road or highway upon condition that the consent of the local authorities having the control of and the consent of the owners of one-half in value of the property bounded on that portion of any existing street, avenue, road or highway, upon which said railroad is to be constructed, *have heretofore been* or shall hereafter be first obtained, and with like effect as though such company was organized under this act to construct and operate such railroad extensions and branches. And every such company shall possess all the rights and privileges conferred by this act, and be subject to, and comply with, all the provisions of this act. And any such railroad company or corporation which has partially constructed a railroad on any street, avenue or highway may complete and operate the same in any street, avenue or highway in respect to which the consent of property-owners and local authorities, as required by the constitution and herein provided, *has been* or shall be hereafter first obtained."

This permits any existing railroad company to construct and operate a road, or to complete and operate any such road, which is partially constructed, upon any street, avenue, road or highway within the limits of the State, and bases the compliance with the constitutional requirements upon consents which may have been obtained within an unlimited time prior to the actual occupancy of the streets, avenues and highways for railroad purposes, and which consents may be directly opposed to the wishes and desires of those who are the owners and occupants of the lands bounding on said streets, avenues and highways, at the time they are so appropriated.

Section seven of the bill presents some curious features, in the following language :

“No new or additional railroad tracks shall be constructed or allowed to be constructed, maintained or operated by any railroad corporation under the provisions of this act, in that portion of any of the streets, avenues or highways of any city, town or village where railroad tracks have been heretofore constructed and are now laid, except that additional tracks for a distance not exceeding one thousand feet may be laid in that portion of any such street, avenue, road or highway, as to which consent of local authority and property owners required by the Constitution, *have been heretofore obtained* ; nor shall any railroad tracks be constructed, maintained or operated, except for said one thousand feet as aforesaid, upon that portion of any street, avenue, road or highway where they are now authorized to be constructed, by an act of the Legislature or as to construction of which the consent of the local authorities and of the owners of one-half in value of the property bounded on that portion of any street, avenue, road or highway upon which such tracks have been or are proposed to be constructed, has been heretofore obtained, excepting by the corporation to which such authority or consent has heretofore been granted or given.”

This seems to forbid the laying of additional tracks in any part of the streets where tracks already exist, except for a distance not exceeding one thousand feet, and then only in case consents *have been heretofore obtained*; and it is not certain that the consents obtained at a very remote period in the past, to lay one track, will not be invoked to confer the exclusive right to construct an additional track for the distance of one thousand feet.

This section, as I understand it, also prohibits, except as to the said one thousand feet, the construction and maintenance of railroad tracks in any part of a street, avenue, road or highway, wherein authority has been given to so construct or maintain, either by an act of the Legislature, or by virtue of the consent of property owners and local authorities *heretofore obtained*, unless the said road shall be constructed, maintained and operated by the corporation which has heretofore received such consents or authority.

The effect of this would seem to be, to limit the right to construct or maintain certain railroads in the streets to such corporations as have heretofore been authorized by prior consents or act of the Legislature, to the exclusion of such corporations as should hereafter obtain the consents of present property owners and local authorities.

I have not overlooked the fact that the sixth and seventh sections of this bill speak of railroad companies and railroads, while the previous sections deal with street railroads and companies. I suppose, however, it will be claimed, if occasion requires, that the railroads mentioned in sections six and seven are street railroads, and the companies spoken of, such as may construct and maintain street railroads. Otherwise they have no place in a law entitled "An act to provide for the construction, maintenance and operation of

street railroads in cities, towns and villages." Moreover, the consents of owners and local authorities, "as required by the Constitution," are referred to in both sections. It appears entirely proper, in the consideration of this bill, to treat the corporations mentioned in these particular sections, as street railroad companies and the roads therein referred to as street railroads.

In any event, if it is proposed to act under the Constitution, there should honestly and fairly be accorded to the people, the protection which the Constitution intended.

I think no one can read the peculiar provisions of this bill, without being convinced that its design is more to further private and corporate schemes, than to furnish the citizens of the State street railroad facilities, under the spirit and letter of the Constitution, and within the limits therein fixed for the benefit of the people.

GROVER CLEVELAND.

MEMORANDUM FILED WITH SENATE BILL No. 445,
PROVIDING FOR NEW WATER-WORKS IN NEW
YORK CITY. DULY APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 1, 1883. }

[Filed with Secretary of State.]

Memorandum filed with Senate bill No. 445, entitled "Act to provide new reservoirs, dams and a new aqueduct, with the appurtenances thereto, for the purpose of supplying the city of New York with an increased supply of pure and wholesome water."
Duly approved.

I have delayed action on this bill in deference to the wishes of residents of the city of New York who desired

to be heard upon the measure ; and after listening to much discussion on the subject, I am very clear in the opinion that I ought to approve the bill.

That the city of New York should have a greater supply of water, there are few, I think, have the hardihood to dispute. An examination of the present condition of affairs also discloses the danger that even the present inadequate supply may at any time be interrupted or suspended. These considerations force the contemplation of a contingency fraught with discomforts, deprivation and peril to more than a million inhabitants of the State. To temporize with such a question, or to hesitate in the face of such a danger, savors of a recklessness almost criminal.

The bill before me, so far as I am able to discern, is a carefully drawn plan to remedy the evil, and supply this pressing need of the city of New York.

The principal objection urged against this bill is that the designation of commissioners in the bill itself by the Legislature is unconstitutional, undemocratic and a violation of the doctrine of home rule.

I think the bill is constitutional ; and while I am not willing to be committed to the assertion that the best manner of selecting commissioners was determined upon by the Legislature, I am unwilling to be responsible for the delay of this work, because another plan was not adopted.

It is hinted, rather than alleged, that the persons named as commissioners are not such as to give assurance of the speedy, efficient and honest prosecution of the work, and that there is reason to suspect that a political job is concealed within the provisions of this bill.

Such innuendo is easily indulged in, and when not con-

nected with official responsibility may be harmless. But I have no idea that any opponents of the bill would sincerely ask me to defeat this legislation on such grounds.

I believe this bill furnishes the means of relief to the people of the city of New York, and protection from threatened danger. If it shall appear that the work is not in good hands, I shall be surprised and disappointed. And it is confidently expected that in a common need, all opposition to the details of the project will be displaced by a cordial co-operation with those bearing the immediate responsibility of its consummation.

GROVER CLEVELAND.

MEMORANDUM OF OBJECTIONS ACCOMPANYING THE SUPPLY BILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, N. Y., June 1, 1883. }

[Filed with Secretary of State.]

Statement of items of appropriation objected to, and not approved, contained in Assembly bill No. 444, entitled "An act making appropriations for certain expenses of government, and supplying deficiencies in former appropriations."

The several items herein enumerated contained in Assembly bill No. 444, entitled "An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations," are objected to, and not approved, for the reasons hereinafter stated.

"For the payment of the expenses for cartage of Senate and Assembly documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-three, to be paid to the parties who ren-

dered the services, the sum of nine hundred dollars, being five hundred dollars for carrying Assembly documents, and four hundred dollars for carrying Senate documents."

This item is objected to, and not approved, for the reason that the compensation named is clearly disproportionate to the value of the services rendered. The appropriation for this purpose in 1875, was two hundred dollars, and while the service rendered is now no greater than then, the compensation has gradually increased from year to year, until it has reached the sum here proposed. This seems to be entirely unjustifiable.

"For the law library formerly in possession of Chief Judge Church, and the law library formerly in possession of Chief Judge Folger, for the payment of books already purchased by the State, and books required for the libraries, the sum of five hundred dollars each, to be paid on bills certified by the judge having such library in charge, and on checks or drafts certified to be correct by the chief judge of said court."

This item is objected to, and not approved, for the reason that it does not appear that the libraries for which the tax is proposed are for the use of the public; and furthermore, the purchase of books for which no appropriation has been made was a violation of law. Ample provision has already been made in the regular way for the support of the public libraries owned by the State.

That portion of the appropriation for the Commissioners of Fisheries which reads as follows:

* * * "For rebuilding the salmon-trout hatching-house, at Caledonia, one thousand dollars; for maintenance of the new hatching establishment at Cold Spring, Long Island, three thousand dollars, and for maintenance of the hatching establishment at Palenville, Greene county, one thousand dollars."

These several items are objected to, and not approved, for the reason that the sum of fifteen thousand dollars appropriated for the maintenance of the State Fisheries, should be sufficient to meet all necessary expenses of that branch of the public service.

"For Messrs. Eidlitz, Richardson & Company, architects of the Capitol building, for advances made by them for repairs of the ceiling of the Assembly Chamber, done upon the consent of the Capitol Commissioners, during the summer of eighteen hundred and eighty-two, the sum of three thousand one hundred and fifty-nine dollars and fifty-five cents."

This item is objected to and not approved.

According to the report of the New Capitol Commissioners made to the Legislature, the commission gave its consent that the architects might make what repairs to the Assembly Chamber ceiling they deemed proper, at their own expense, and that the State should not be made liable for the expenditure.

"For supplying the New Capitol with water from eighteen hundred and seventy-nine to November, eighteen hundred and eighty-two, to be paid for out of the maintenance fund of the Capitol, the sum of five thousand nine hundred and ninety-six dollars and seventy-two cents."

This item is objected to, and not approved, for the reason that if any liability exists on the part of the State, the claim is clearly one that should be submitted to the State Board of Claims.

"For deficiency in appropriations for postage, expenses of committees, compensation of witnesses, legislative manuals, *Croswell's Manual*, Clerk's Manual, indexing the bills, journals and documents of the Senate and Assembly, and other contingent expenses of the Legislature, and for pay of messengers, eighteen thousand five hundred dollars, or so much thereof as may be necessary, to be paid, in case of expenses of committees on the certificates of the chairman of such committees, and in case of services for either house of the Legislature on the certificate of the clerk of such house, subject to the audit of the Comptroller."

This item is objected to, and not approved.

The ordinary annual appropriation for compensation and mileage of members and officers of the Legislature is three hundred and forty thousand dollars. In addition to this, the Legislature has already appropriated thirty-three thousand dollars for contingent expenses, an amount certainly sufficient to meet all proper expenditures of the class covered by the foregoing item.

I have obtained from the Comptroller a statement of the items which go to make up the eighteen thousand five hundred dollars provided for in the item under consideration. While some of the claims are, perhaps, proper, the great bulk of them are for expenditures in plain violation of law; the amounts named are, in most instances, largely in excess of the value of the services rendered; and they could not have received legislative sanction had they been enumerated in the bill, several of them having been the subjects of previous vetoes when standing alone.

If this item should be approved, it would establish a very dangerous precedent and furnish a way of expending the public money for purposes which could not stand the test of scrutiny.

"For the actual and necessary traveling and incidental expenses of the agent of the Comptroller to examine the accounts of auctioneers, one hundred and fifty dollars, or so much thereof as may be necessary."

This item is objected to, and not approved. If this office is to be continued at all, the salary now allowed the agent is ample to cover all necessary traveling expenses.

"For the Comptroller, for payment of the services, disbursements and expenses of counsel employed by the late Attorney-General Fairchild, to defend the late Auditor of the Canal Department in a suit brought in the Supreme Court against him as such auditor on the relation of Orrin W. Sage, the sum of one thousand eight hundred and six dollars and ten cents, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason that if any liability exists on the part of the State, the claim should be submitted to the State Board of Claims.

"For the Comptroller, for payment of the services of counsel employed by the late Attorney-General on the part of the State, in the Albany County Court, in the suit of the People against Francis E. Rowley, the sum of forty-two dollars, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason stated for the disapproval of the last named item.

"For the Comptroller, for payment of counsel to assist the committee on cities of the Senate in the investigation of the Department of Public Works of the city of New York, pursuant to resolution of the Senate, passed May sixteenth, eighteen hundred and eighty-two, two thousand dollars, or so much thereof as may be necessary."

This item is objected to, and not approved, because no reason exists why the people of the State should be called upon to pay the expenses of investigating a local department in the city of New York.

"For the Comptroller, for the payment of counsel to assist the committee on villages of the Senate, in the investigation of the methods employed by the trustees of the town of, Gravesend, in the management of common lands, pursuant to resolution of the Senate, passed May thirty-first, eighteen hundred and eighty-two, one thousand five hundred dollars, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason that no authority existed for the employment of counsel by this committee.

"For the Comptroller, for payment of services of counsel to assist the committee on insurance of the Senate of eighteen hundred and eighty-two, in the investigation of the affairs of William J. Best, as receiver of the National Trust Company, pursuant to resolution of the Senate adopted February twenty-eight, eighteen hundred and eighty-two, the sum of two thousand dollars, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason that no authority existed for the employment of counsel by the committee.

"To the Clerk of the Assembly, one hundred dollars, to pay for extra services in the wrapping department."

This item is objected to, and not approved, for the reason that the number of officers and employes of the Legislature is fixed by law, and if any necessity exists for the employment of additional help, provision is made for the payment of the same from the contingent fund of the clerk.

"For the services and expenses of the person designated by the joint library committee of the Senate, in pursuance of resolution of the Senate, passed June second, eighteen hundred and eighty-two, to arrange and classify the statutes, documents, digests and other books comprising the library of the Senate, the sum of one thousand dollars."

This item is objected to, and not approved, for the reason that in my judgment the appropriation named is an excessive one for the services rendered, and the claim, if any exists, is one which can with propriety be submitted to the State Board of Claims.

"For the State entomologist, for the necessary expenses of his office, two hundred dollars, to be paid on vouchers to be approved by the Comptroller."

This item is objected to, and not approved, for the reason that the sum annually appropriated for the State Entomologist is all that the State should be called on to pay for that office.

"For the superintendent of weights and measures, for salary, for two years, one thousand dollars."

This item is objected to, and not approved, for the reason that I am advised that no services have been rendered during the time mentioned, and that the office is of no practical value to the people.

"For William J. McDonald, for services rendered and to be rendered under the direction of the clerk of the Senate, the necessity for which was occasioned by the last illness and death of the journal clerk of the Senate, five hundred dollars."

This item is objected to, and not approved, for the reason that the law declares that no additional officers or employees shall be elected or appointed by the Senate or Assembly.

The vacancy caused by the death of the journal clerk of the Senate was filled by the appointment of another person, who has been paid in full, and the clerk of the Senate is prohibited by law from the employment of additional officers.

"For the New York State Dairymen's Association, one thousand dollars, for the purpose of extending dairy knowledge and sciences, and to disseminate the same."

inate the same among the people of this State, the necessary vouchers of the expenditure to be furnished to the Comptroller."

This item is objected to, and not approved, for the reason that the purpose is not a proper one for State appropriation.

"For boring an experimental well to test the question of the existence of salt in place at or near the Onondaga Salt Springs Reservation, to be expended under the direction of the superintendent of the Onondaga Salt Springs, the sum of ten thousand dollars, or so much thereof as may be necessary. This appropriation shall be paid from the general fund out of any money arising from the duties on salt not otherwise appropriated."

This item is objected to, and not approved, for the reason that the expenditure at this time of public money for such a purpose is entirely unjustifiable and improper.

"For repairs to the State dam across the Genesee river, at or near Mount Morris, in the county of Livingston, to be expended by and under the direction of the Superintendent of Public Works, one thousand dollars; and this appropriation shall release the State from all further claims for repairs and work upon the dam across the Genesee river."

This item is objected to, and not approved.

The State has already expended for this object a large sum of money. It is doubtful if any obligation rests on the State to do this work, and in any event, a sufficient sum has been appropriated for that purpose.

"For digging a ditch from the culvert under the Erie canal, in Wayne county, near the southern boundary thereof, for draining stagnant water into the channel of the old canal, the sum of five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Works, and payable out of any funds appropriated for the abatement of nuisances."

This item is objected to, and not approved, for the reason that it does not satisfactorily appear that this is work which should be undertaken by the State.

"For building a bridge over Clear creek on the Cattaraugus Indian reservation in Erie county, in lieu of a bridge heretofore erected by the State, and the approaches thereto, the sum of three thousand dollars, or so much thereof as may be necessary; and to perfect, repair and complete the approaches to the iron bridge heretofore erected by the State over the same creek on the said reservation, the sum of three hundred dol-

lars ; each of these appropriations shall be expended under the direction of the Superintendent of Public Works."

This item is objected to, and not approved.

This appropriation is prohibited by section eighteen, of article three of the Constitution.

"For a new school-house on the Onondaga Indian reservation, five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Instruction."

This item is objected to, and not approved, for the reason that I am not satisfied that in the present relations between the State and the Indians this is a proper object for the appropriation of public money.

"For a new school-house on the Allegany Indian reservation, five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Instruction."

This item is objected to, and not approved, for the reasons above stated.

"For repairing the bridge and the approaches thereto over the Onondaga creek, on the Onondaga Indian reservation, one thousand dollars, which shall be expended under the direction of the commissioner of highways of the town of Onondaga, who shall receive three dollars per day for the same, not to exceed thirty dollars."

This item is objected to, and not approved. No reason exists why the general laws relating to highways should not be observed in this case.

"For the construction of a highway across the St. Regis Indian reservation, the sum of two hundred and fifty dollars, or so much thereof as may be necessary, and William Gillis and Samuel Barlow are hereby appointed commissioners to disburse the same."

This item is objected to, and not approved, for the reasons above stated.

"For Mrs. Catharine Hogan, widow of Patrick Hogan of Albany, and the three children of said Patrick Hogan, share and share alike, as a gratuity in full for all claims for damages for the loss by death of the said Patrick Hogan, who fell through an opening of the elevator, April twenty-fifth, eighteen hundred and seventy-nine, while employed on the New Capitol, and who was instantly killed, the sum of one thousand dollars."

"For Thomas McAvoy, as a gratuity, in full for all claims for damages, for the permanent injury to his leg caused by the falling of a stone, weighing seven tons, upon him, while working on the New Capitol, on the twenty-eighth day of December, eighteen hundred and eighty-two, five hundred dollars."

"For Carl Meissner, of Battery G, Seventh Division, National Guard, State of New York, as a gratuity, he being permanently disabled for life by the premature discharge of a cannon while on duty with his battery at Elmira, New York, on the thirteenth day of May, eighteen hundred and seventy-nine, one thousand dollars."

"For Thomas J. Lawrence, corporal, Company F, Twenty-second Regiment, National Guard, as a gratuity, who was disabled for life while on duty, as required by law, in rifle practice, one thousand dollars."

"For Michael O'Keef, as a gratuity in full for all claim for damages for the permanent injury to his left eye, caused by a splinter of steel flying from the drill of a workman near to himself, while working on the New Capitol, on the first day of July, eighteen hundred and seventy-nine, five hundred dollars."

"For Bennett A. Humo, as a gratuity in full for all claim for damages for the permanent injury to his right eye, resulting in blindness, caused by a splinter from the face of a hatchet he was using in opening an iron-bound cask, in the service of the State, at the Hudson River State Hospital, on the twenty-sixth day of March, eighteen hundred and seventy-seven, five hundred dollars."

"For Stephen Taylor, as a gratuity for all claim for damages for the loss of the fingers of his right hand, cut off by a circular saw, September fifteenth, eighteen hundred and eighty-two, while he was at work on the New Capitol, one hundred and twenty-five dollars."

"For J. C. Young, as a gratuity in full for all claim for damages for injury to his limbs and spine, caused by the giving away of trestle work on the seventeenth day of May, eighteen hundred and eighty-two, while he was at work on the New Capitol, five hundred dollars."

These several items are objected to, and not approved, for the following reasons :

They are all declared to be gratuities. This implies that the sums of money specified in the several items are purely donations, and that they are in no sense obligations against the State. Many of the cases thus provided for, involve considerations which strongly appeal to our pity and sympathy ; but my conception of public duty leads me to the conviction that the people pay taxes for their benefit and

protection, and that this forced contribution of the public funds is not justified except upon that theory. Public officials having the money of the people in their keeping, are solemnly charged with the duty of expending the same with a due regard to business principles, for the substantial good of the citizen and for the public needs.

This positively excludes the appropriation of the same for gratuities, resting solely on motives of charity and benevolence.

If a legitimate demand against the State is involved in any of these instances, a Court of Claims has been provided, in which it may be heard and passed upon, thus affording ample remedy to the citizen seeking redress from the State.

That portion of the item of appropriation for the New York State Lunatic Asylum which reads as follows :

"Any portion of any amount designated in this item for any purpose, remaining unexpended after the accomplishment of such purpose, may be used for any other purpose designated in this item."

This item is objected to, and not approved, for the reason that the appropriations should be confined to the purposes for which they are granted. Such a provision would lead to uncertainty, and a perversion of the intention of the Legislature.

That portion of the appropriation for the Binghamton Asylum for the Chronic Insane which reads as follows :

"For the purchase of ten cows, five hundred dollars ; for farm and garden utensils, five hundred dollars ; for wagons and harness, three hundred and five dollars ; for fencing, one thousand dollars ; for farm, barn and sheds, four thousand dollars ; for apple and pear trees, two hundred dollars ; for furnishing buildings, two thousand five hundred dollars ; for general repairs, fifteen hundred dollars ; for painting trestle over railroad and highway, for steam pipe, two hundred and fifty dollars ; for carpenters, plumbing and steam fitting tools, tools for engineer at water-works, and blacksmith tools, five hundred dollars ; for laundry machinery, four hun-

dred and seventy-five dollars * * * and for maintenance, ten thousand dollars. Any portion of any amount designated in this item for any purpose, remaining unexpended after the accomplishment of such purpose, may be used for any other purpose designated in this item."

These several items are objected to, and not approved, for the reason that the appropriation already made, together with the revenues of the asylum from other sources, should be sufficient to meet all necessary demands of this character.

For reasons previously stated, the item authorizing the expenditure of money appropriated for a specified purpose for other objects, is disapproved.

That portion of the appropriation for the Buffalo Asylum for Insane, which reads as follows :

* * * "To reimburse maintenance expended for stock on farm, nine hundred dollars ; * * * for storm windows for wards and administration buildings, and for cistern for storage of water to provide against failure of city supply, eight hundred dollars ; * * * for additional furniture for wards and administration building, four thousand dollars for mortuary rooms, one thousand dollars. * * * Any portion of any amount designated in this item for any purpose, remaining unexpended; after the accomplishment of such purpose, may be used for any other purpose designated in this item."

These several items are objected to, and not approved, for the reason that I believe that an appropriation for the purposes named at the present time is unnecessary.

That portion of the appropriation for the State Homœopathic Asylum at Middletown, which reads as follows :

"For tile floor in basement of main building, one thousand five hundred dollars; * * * for medical library and surgical appliances, five hundred dollars; for gymnasium and work-shop, one thousand dollars; for officers' salaries, two thousand dollars, and for furniture for new wards, two thousand dollars."

These several items are objected to, and not approved, for the reason that the expenditures are of such a character that they do not appear to be necessary. Provision has already been made in the appropriation bill for the payment of officers' salaries.

"For the New York Asylum for Idiots, for furniture for present farmhouse, one thousand two hundred dollars; for farm stock and tools, one thousand two hundred dollars; for barns, sheds and shops, two thousand six hundred dollars; and for new cottages for sixty adult idiots, with furniture for the same, five thousand dollars."

These items are objected to, and not approved, for the reason that twenty-five hundred dollars was appropriated in the last supply bill for repairs to farm buildings, and fifty-three thousand five hundred dollars has been this year appropriated for the general purposes of the institution. This should make the expenditure of the sums here objected to, unnecessary at this time.

That part of the appropriation for the State Asylum for Insane Criminals, at Auburn, which reads as follows:

* * * "For additional steam pipes, radiators, cooking apparatus and labor connecting the same, two thousand five hundred dollars; for fire protection and connecting the same, one thousand two hundred dollars; and for enlarging and furnishing chapel, two thousand five hundred dollars."

These several items are objected to, and not approved.

The sum of thirty thousand dollars has already been appropriated this year for the support, maintenance and ordinary repairs of this institution. It is to be hoped that, with the exercise of proper economy, this amount, together with that portion of this item approved, will be sufficient to meet all necessary expenses of the asylum.

"For the support and maintenance of juvenile delinquents at the Catholic Protectory, twenty thousand dollars."

This item is objected to, and not approved.

By chapter 448 of the laws of 1863, a corporation was created named "The Society for the Protection of Destitute Roman Catholic Children in the City of New York."

The name of this corporation was changed by act of the Legislature in the year 1871, to "The New York Catholic Protectory."

The appropriation in the item above mentioned is "for the support and maintenance of juvenile delinquents at the Catholic Protectory."

Without inquiry as to the effect of the misnomer of the corporation as it appears in the appropriation, I think it should not be approved for other reasons.

If it were not for an opinion given by a former Attorney-General of this State, I should have great doubt as to the validity of this appropriation under that section of the Constitution which provides as follows :

"Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb and juvenile delinquents, as to it may seem proper, nor shall it apply to any fund or property now held by the State for educational purposes."

The only provisions of the charter of this institution under which it can be claimed to be a place for the maintenance of juvenile delinquents, are those which allow it to take and receive "children between seven and fourteen years of age who may be committed to the care of such corporation, as idle, truant, vicious or homeless children, by order of any magistrate in the city of New York, empowered by law to make committal of children for any such cause," and also "children of the like age, who may be transferred at the option of the Commissioners of Public Charities and Correction of the city of New York, to such corporation."

The name of this institution implies that only Roman Catholic children are there provided for. If this be so, that fact furnishes a good reason why public funds should not be contributed to its support. A violation of this principle in this case would tend to subject the State treasury to

demands on behalf of all classes of sectarian institutions which a due care for the money of the State and a just economy could not concede, and which would yet have a justification in precedent.

It will be seen, too, that the delinquents received at this institution are committed to its care by the authorities of the city of New York.

Thus it appears to be local in its purposes and operation, which affords, it seems to me, an additional reason why it should not be aided by the State.

I am informed that the municipality of New York pays a stated and reasonable compensation for the support and maintenance of such juvenile delinquents as are committed to this Protectory. If this be true, even the plea of want and necessity cannot be urged to justify this appropriation.

"For Western House of Refuge, for replacing the steam heating-apparatus, seven thousand five hundred dollars."

This item is objected to, and not approved.

The sum of seventy thousand dollars has been appropriated in the regular way this year for this institution, an amount which should be sufficient to cover all necessary expenditures.

"For Mrs. Lydia Mullin, widow of Joseph Mullin, deceased, late a justice of the Supreme Court, whose term of office was abridged pursuant to the provision of section thirteen of article six of the Constitution, and who had served as such justice ten years, for the residue of the annual compensation as such retired justice, for the year ending on the thirty-first day of December, eighteen hundred and eighty-two, the sum of four thousand dollars, or so much thereof as may be necessary, payable out of any moneys in the treasury heretofore appropriated for such compensation."

"For Mrs. Mary T. Creney, widow of the late Col. James Creney, who at the time of his death, on the second day of March, eighteen hundred and eighty-two, was assistant Commissary-General of the State, as a gratuity, in full for all claim for compensation for services to the State, one thousand dollars."

"For Mrs. Catharine D. Pierson, widow of William W. Pierson, late jour-

nal clerk of the Senate, as a gratuity, in lieu of the balance of his salary which he would have earned had he lived to the end of the session, eight hundred dollars."

"For Mrs. Delia Weatherwax, widow of the late James H. Weatherwax, who was a State Assessor at the time of his death, which occurred on the first day of January, eighteen hundred and eighty-three, as a gratuity, in lieu of the residue of the annual salary of such assessor, up to and including the twenty-fourth day of March, eighteen hundred and eighty-three, the sum of five hundred and seventy-seven dollars and seventy-five cents, payable out of any moneys heretofore appropriated for such salary."

These several items are objected to, and not approved, for reasons stated in the memorandum of reasons given for the disapproval of gratuities to Mrs. Catherine Hogan and others.

"For Hon. Leman Hotchkiss, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the second Assembly district of Wayne county, for the year eighteen hundred and eighty-three, the sum of two thousand and three hundred dollars."

"For Hon. Richard A. Derrick, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the second Assembly district of Rensselaer county, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars."

"For Hon. David Lindsay, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the eighth Assembly district of Kings county, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars."

"For Hon. Thomas J. Sheridan, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the fifth Assembly district of Kings county, for the year eighteen hundred and eighty-three, the sum of one thousand dollars."

"For Hon. Thales S. Bliss, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the thirteenth Assembly district of the county of New York, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars."

These several items are objected to, and not approved.

Until the year 1875 there was no prohibition against the payment, from the funds of the State, of the counsel fees and the other expenses of both parties in case of a contest regarding seats in the Legislature, and appropriations were very frequently made to reimburse or compensate the unsuccessful as well as the successful party. But in the year men-

tioned a law was passed prohibiting such payments, except to the party who should be declared entitled to the seat. I am of the opinion that the payment of counsel fees and expenses in either case should be discontinued.

By the Constitution of the State each branch of the Legislature is made the judge of the elections, returns and qualifications of its own members.

So far as the office of Senator or Member of Assembly is merely one of honor, dignity or emolument, it concerns the person seeking to be recognized as such, and should be secured and defended like any other right.

But so far as it is important that the people should be represented by those who have actually been chosen, and so far as the dignity and legal constitution of the body is involved, it is a matter of public interest and importance.

This latter phase of the question is committed for determination to the body in which the seat is claimed. Such body is authorized to appoint a committee who shall collect the testimony bearing upon the question. This committee is naturally composed of such members as are well able to examine the subject; witnesses are brought before them at the expense of the State, and if thought necessary, counsel may be employed at like expense, to aid them in their investigations.

This committee should, of course, be entirely unprejudiced, seeking only to determine between the contesting parties the exact truth, touching the office and the seat which is the subject of controversy.

With provision made for securing the attendance of witnesses, and the services of counsel to aid them if necessary, they seem to be well equipped for protecting the interests of the people so far as they are in question.

Additional counsel and other expenses not required by them and not absolutely necessary to enable them to arrive at an intelligent and satisfactory conclusion, should be charged to the private interests involved, and on principle should not be borne by the State.

The items here objected to amount to \$7,800, and it is perfectly plain that the allowance of such appropriations, based, as I believe, on wrong principles, opens the door to great and increasing abuses.

"For securing additional religious instruction to convicts in the several State prisons, fifteen hundred dollars, to be expended under the direction of the Superintendent of State prisons."

This item is objected to, and not approved.

Ample provision has already been made in the appropriation bill for the maintenance of all branches of the prison service.

"For books for the library of Clinton prison, three hundred dollars."

This item is objected to, and not approved, for the reason above stated.

"For repair of the State road, leading through State lands from Clinton prison to Ellenburgh and the Saranac river, the sum of two thousand dollars, to be expended under the direction of the Superintendent of State prisons."

This item is objected to, and not approved, for the reason that it does not appear to be work which the State should be obliged to do.

"For laying sidewalks and paving gutters in front of State prison lands in the village of Sing Sing, one thousand dollars, to be expended under the direction of the agent and warden of Sing Sing prison and on the approval of the Superintendent of State prisons."

This item is objected to, and not approved.

Abundant provision has already been made for the maintenance and care of the prison property, and for all legitimate and necessary expenditures.

"For the trustees of the State library, for the purchase of thirty copies of 'The Public Service of the State of New York,' published by J. R. Osgood & Co., for presentation to foreign national libraries and societies, the sum of nine thousand dollars, or so much thereof as may be necessary, payable by the Treasurer on the warrant of the Comptroller, on the certificate of the Secretary of the Regents of the University that such copies have been duly contracted for by said trustees and delivered to them."

This item is objected to, and not approved.

It provides for the purchase of a quantity of books at a cost of three hundred dollars per copy. The purchase of books so expensive as these is an unjustifiable use of the public money, and if it were desirable to send such works abroad, the libraries for which they are intended should be named.

"For the office of the railroad commissioners, for salary of a clerk to index and prepare for ready reference railroad maps required by law to be placed on file in their office, and to assist in preparing the annual railroad report, the sum of one thousand two hundred dollars, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State in such proportion as is prescribed in section thirteen of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two."

This item is objected to, and not approved.

The law creating the railroad commission limits the expense of the commission to fifty thousand dollars per annum. That sum has already been appropriated.

"For the railroad commissioners, for printing and binding in cloth, for distribution as heretofore, such number of copies of the reports on railroads as may be required in addition to such copies thereof as may be printed as a legislative document, and in addition to the five hundred copies thereof provided in section eleven of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two, eight thousand dollars, or so much thereof as may be necessary, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State, in such proportion as is prescribed in section thirteen of said chapter."

This item objected to, and not approved, for the reasons above stated.

"For supplying the railroad commissioners with copies of railroad maps on file in the office of the State Engineer and Surveyor, to be prepared under

the direction of the State Engineer and Surveyor, the compensation therefor to be fixed by him and the Comptroller, not in excess of the amount herein appropriated, the sum of two thousand dollars, or so much thereof as may be necessary, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State, in such proportion as is prescribed in section thirteen of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two. It shall be the duty of the State Engineer and Surveyor to furnish to the board of railroad commissioners copies of all railroad maps hereafter filed in the office of the State Engineer and Surveyor."

This item is objected to, and not approved, for the reasons first above stated.

"For clerk hire, for services in the preparation of the annual report on railroads for the year eighteen hundred and eighty-one, three hundred and twenty-five dollars, payable on the certificate of the State Engineer and Surveyor, and to be refunded to the treasury by the several railroad corporations of this State in proportion to their respective gross receipts pursuant to chapter five hundred and twenty-six of the laws of eighteen hundred and fifty-five."

This item is objected to, and not approved, for the reason that abundant provision is annually made for clerk hire in the office of the State Engineer and Surveyor to perform all duties pertaining to the office, including the preparation of the annual report. If any person not connected with the office was in the employ of the State while preparing the annual report of the State Engineer, his services constituted a private claim against the State, which, under the Constitution, cannot be audited by the Legislature.

"To the trustees of the State library, to enable them to purchase the original correspondence and other papers of Daniel D. Tompkins, Governor of the State of New York (from eighteen hundred and seven to eighteen hundred and seventeen) and vice-president of the United States (from eighteen hundred and seventeen to eighteen hundred and twenty-five), and to include all the correspondence known as the Tompkins papers, the sum of five thousand dollars."

This item is objected to, and not approved, on the ground that while the possession of these papers on the part of the State may be very desirable, the benefit to be derived

therefrom hardly seems to justify such a large expenditure of public funds.

"For the commissioner in lunacy, for clerical, stenographic and other necessary work in visiting the institutions where lunatics are confined, three hundred dollars, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason that the sum of one thousand dollars, heretofore appropriated for the incidental expenses of this officer, should be sufficient to meet all proper expenditures of this character.

"For the State Superintendent of Public Instruction to enable him in connection with the American Museum of Natural History, in Central Park in the city of New York, to establish a department for giving the most complete instruction illustrated by the collections of said museum to the teachers of the common schools of said city, and through them to their pupils, on human and comparative anatomy and physiology and zoology, and other subjects upon which the board of education of said city may require that oral instruction shall be given, the sum of twelve thousand dollars, to be paid by the treasurer, on the warrant of the Comptroller and approval of the State Superintendent of Public Instruction, from funds raised in said city for educational purposes."

This item is objected to, and not approved.

With the ample provision made by the State for the public instruction no good reason exists why it should be asked to assume the expense of this new departure.

"For the State Board of Health, to prevent the adulteration of food and drugs, and the sale of adulterated food and drugs, under chapter four hundred and seven of the laws of eighteen hundred and eighty-one, the sum of ten thousand dollars."

This item is objected to, and not approved.

The sum of twenty thousand dollars has already been appropriated for the general purposes of the State Board of Health. So far as offenses under the law are concerned, they can be prosecuted by the proper authorities of the respective counties.

"For the prevention of the manufacture, sale and use of dangerous explosive illuminating oils, chapter two hundred and ninety-two of the laws of

eighteen hundred and eighty-two, the sum of three thousand five hundred dollars."

This item is objected to, and not approved, for the reasons above stated.

"For the payment of a canal certificate given by a late Canal Commissioner, addressed to the Comptroller December fourteenth, eighteen hundred and seventy-six, for removing obstructions from the outlet of Cayuga lake and the channel of Seneca river, between Cross lake and Montezuma, five hundred and forty-two dollars and forty-eight cents, and for interest thereon, one hundred and ninety-five dollars and twenty-five cents, or so much thereof as may be necessary."

This item is objected to, and not approved.

If this claim is a valid one, it should be submitted to the State Board of Claims. It is supposed to be based upon work done in excess of an appropriation.

"For fees and disbursements of counsel in defending Theodoric R. Westbrook, Justice of the Supreme Court, before the committee on judiciary of the Assembly in the investigation of charges against him, in eighteen hundred and eighty-two, two thousand three hundred dollars, payable on the certificate of the chairman of said committee."

This item is objected to, and not approved.

On the 12th day of April, 1882, a resolution was adopted by the Assembly, reciting that charges had been, from time to time, made by the public press against Justice T. R. Westbrook, on account of his official conduct in relation to suits brought against the Manhattan railway, and other cases, and which empowered and directed the judiciary committee of the Assembly, to investigate his conduct in relation to such suits, and report at the earliest day practicable.

The judiciary committee thus required to investigate this matter comprised some of the best legal talent in the Assembly, and was abundantly able to conduct any inquiry necessary, and to properly elicit and weigh all evidence touching the subject. Moreover counsel was especially employed by order of the Assembly to assist the committee.

It must be borne in mind that this committee was merely to investigate the conduct of Justice Westbrook and report. It was an inquiry set on foot by the Assembly for its own information. There was no provision for any notice to be given the party whose conduct was to be the subject of investigation, and it was entirely competent and not improper for the committee, if it so desired, to conduct its inquiry in secret and with closed doors.

So far as appears from the proceedings of the committee, no notice was formally given to the party whose conduct was to be examined; but it seems that his counsel was permitted to be present and take part in the examination of witnesses. There is no pretense that he appeared there, otherwise than at the request and upon the retainer of a private client, and at the sufferance of the committee.

The nature of the report of a majority of the committee has nothing to do with the question.

No person was on trial, no one was called on to defend himself (if that should make a difference), and the committee stood in no need of the assistance of counsel in addition to that provided by the Assembly.

It is difficult to discover how a legal or equitable claim against the State arises from this transaction :

"For P. J. Joachimsen, as attorney for H. W. O. Edye and William Volckens, in the action hereinafter named, the sum of seven hundred and twenty-five dollars and forty-five cents, being the amount in full payment of the principal of a judgment for costs against the people of this State in favor of said Edye and Volckens, in an action commenced in the name of the people, in the Common Pleas court in the city of New York, against the said Edye and Volckens, which judgment was docketed in the clerk's office of New York county, on the twenty-second day of June, eighteen hundred and eighty-two; and the further sum of forty-three dollars and fifty-two cents, or so much thereof as may be necessary, for interest on said judgment. The Comptroller shall pay the above sums to the above-named attorney, out of any moneys heretofore appropriated for the Commissioners

of Emigration, not otherwise expended, upon the filing by said attorney with the Comptroller, of a satisfaction of said judgment, certified to be in due form by the Attorney-General.

This item is objected to, and not approved.

Five hundred dollars of this amount consists of an extra allowance in addition to the ordinary costs in such cases. There appears to be nothing in the nature of the case or the labor performed to justify this allowance.

"For the State Normal School at Albany, for repairs, scientific apparatus and other expenses, two thousand dollars."

This item is objected to, and not approved.

The annual appropriation for the maintenance of this school is sufficient to meet all necessary expenses for apparatus. In view of the fact that an appropriation has been made for the construction of a new building, no repairs should be undertaken on the old structure.

"For payment of the salaries of the several teachers in the normal school at Cortland, who were removed from office by the Superintendent of Public Instruction and restored by order of the Court of Appeals, in such amounts as shall be certified by the Superintendent of Public Instruction to be due to each in accordance with the decision of such court in ordering such restoration, the sum of ten thousand six hundred and eighty dollars and seventy-one cents, or so much thereof as may be necessary."

This item is objected to, and not approved, for the reason that the State has paid the teachers actually performing the services between the time of the removal of the teachers mentioned in this item and their restoration. The State ought not to pay twice for the same services.

"For the Adjutant-General, for the payment of local assessments on the State armory at Albany, two hundred and ninety-six dollars and thirty-three cents; for the payment of local assessments on the State arsenal at Buffalo, two hundred and fifty-seven dollars and eighty-six cents; and for repairing the street and sidewalk fronting the State armory at Oswego, two hundred and fifty dollars, or so much thereof as may be necessary."

"For the city of Rochester, for assessment on the New York State arsenal in said city, for constructing MacAdam roadway with stone gutters and sidewalk on Jackson street, from South St. Paul street to Monroe avenue, in

eighteen hundred and seventy-eight, four hundred and thirty-eight dollars and fifty-eight cents; for assessment on said arsenal for constructing Mac-Adam roadway with stone gutters and curb stones in South street, from Court street to Griffith street, in eighteen hundred and eighty-two, nine hundred and thirty-two dollars and seventy-one cents; and for assessment on the House of Refuge in said city, for constructing extension of sewer from Lake avenue to Deep Hollow creek, in eighteen hundred and eighty, three hundred and sixty-six dollars and thirty cents."

"For the city of Syracuse, for assessment on the land of the Salt Springs office in said city, for paving Salina street in front of said office, in eighteen hundred and seventy-six, three hundred and eighty-two dollars and seventy-two cents."

These several items are objected to, and not approved.

Items of this character, including some herein named, have been repeatedly vetoed by my predecessors on the ground that the State ought not to be chargeable with municipal taxation. This reason appears to be an entirely valid one against the allowance of these items.

"For the erection of an addition to the military store-house in the city of Binghamton, Broome county, to be used as company rooms by the National Guard in said city and county, the sum of ten thousand dollars, to be expended under the direction of the Adjutant-General, the Inspector-General and the Chief of Ordnance of the State; but no part of said sum shall be expended by them except upon a contract for the completion of such addition within the limits of this appropriation, nor until the above-named officials shall be satisfied that an indefeasible title to the site for such store-house has been vested in the people of this State, and that such site affords ample room for the erection of such addition without impairing the usefulness and purpose of such store-house."

This item is objected to, and not approved.

No new building for military purposes at Binghamton should be begun until the building now in course of erection is completed, and the need of any such additional building in the future is extremely questionable.

"For Benjamin F. Brady, for engrossing and framing memorials of the proceedings of the Senate and Assembly relative to the death of Honorable Webster Wagner, late Senator from the Eighteenth Senatorial District of this State, the sum of eight hundred dollars, payable on the certificate of the committee of the Legislature having charge of the preparation of the memorial."

This item is objected to, and not approved.

It has been once vetoed upon the indisputable ground that the amount named is unreasonable and excessive. While the object may not be an unworthy one, it is to be hoped that if the claim is presented for the third time it will bear a nearer relation to the value of the services actually rendered.

"For the Commissioners of Quarantine, to pay for work, labor and services rendered and materials supplied by Henry P. Kirkham, in the repair of the hospital ship Illinois and the steamer N. K. Hopkins, in eighteen hundred and seventy-nine, fifteen hundred and twenty-dollars and forty-one cents."

This item is objected to, and not approved, for the reason that the claim is clearly one which the Legislature has not the power under the Constitution to audit or allow, and on this ground has heretofore failed to receive the Executive sanction.

"For the Board of Commissioners of Quarantine to carry out the contract made by them with John A. Appleton, for the purchase of real estate in the town of Southfield, Richmond county, dated November twenty-sixth, eighteen hundred and seventy-two, and approved by the commissioners of the land office, December eighteen, eighteen hundred and seventy-two, the sum of one thousand five hundred dollars, or so much thereof as may be necessary, to grade the hill thereon near New York avenue, to a level with the adjoining land owned by St. John's Episcopal church."

This item is objected to, and not approved.

An appropriation for this object was vetoed in 1879, it appearing, upon examination, that among other things the work was unnecessary.

After the lapse of so much time, it seems entirely reasonable to adopt the result of previous investigation.

GROVER CLEVELAND.

MEMORANDUM OF ITEM OBJECTED TO IN ASSEMBLY BILL No. 842, MAKING APPROPRIATION FOR CANALS. OTHERWISE APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *June 2, 1883.* }

[Filed with Secretary of State.]

Statement of item of appropriation objected to, and not approved, contained in Assembly bill No. 842, entitled "An act to provide the means and making appropriations to pay the expenses of superintendence, ordinary repairs and maintenance of the canals for the fiscal year commencing on the first day of October, eighteen hundred and eighty-three, and also to provide for a failure in the revenues to meet the appropriations for the superintendence and ordinary repairs of the canals for the fiscal year ending the thirtieth day of September, eighteen hundred and eighty-three, and reappropriating certain unexpended moneys."

The item contained in section three which reads as follows :

"Taxes for eighteen hundred and eighty-one, twenty-nine thousand four hundred and ninety-one dollars and eighty-two cents."

This item is objected to, and not approved, for the reason that the sum named, being the surplus of a tax levied in 1881, was appropriated for another object by chapter 373 of the laws of the present year.

GROVER CLEVELAND.

IN THE MATTER OF BENJAMIN W. DOWNING, DISTRICT ATTORNEY OF QUEENS COUNTY—NOTICE OF CHARGES PREFERRED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,
ALBANY, July 6, 1883. }

TO BENJAMIN W. DOWNING, *District Attorney of the County of Queens.*

SIR: I have to inform you that charges have been preferred against you and filed in this office, a true copy of which is hereby served on you. You are hereby directed to make answer in writing to the said charges within ten days of such service.

Very respectfully,
GROVER CLEVELAND.

ORDER DIRECTING THE ABATEMENT OF CERTAIN NUISANCES IN QUEENS COUNTY.

STATE OF NEW YORK. }
EXECUTIVE CHAMBER. }

TO THE PRESTON FERTILIZING COMPANY, *Blissville, Long Island, N. Y., and all others whom it may concern:*

Whereas, I, Grover Cleveland, Governor of the State of New York, did heretofore require the State Board of Health to examine into nuisances affecting the security of life and health in Long Island city, and in the town of Newtown, county of Queens; and the said the State Board of Health did thereupon make such examination, and did thereafter and on or about the 6th day of July, 1883, report the results of such examination to me, which report I have this day

approved, and do hereby order to be filed in the office of the Secretary of State ;

And, whereas, in and by the said report the said the State Board of Health do find and certify the business carried on, in and about the locality aforesaid, by the persons hereinabove named, to be a nuisance in this, to wit, that the conduct of said business generates and permits to escape into the atmosphere stench which are offensive and injurious to life and health;

Now, therefore, in accordance with the statutes in such case made and provided, and by virtue of the authority conferred upon me by chapter 322 of the laws of 1880, and the acts amendatory thereof, I do hereby declare the business aforesaid, as now carried on and conducted, to be a public nuisance, and do hereby order the same to be abated and removed ; and for the purpose of insuring such abatement and removal of said nuisance, I do further order that said company, and all persons engaged in the conduct of said business, shall desist and cease, within one week from the service of a copy of this order from the boiling, burning or calcining of bones, and the storage, boiling, drying or steaming of refuse flesh and of all other animal or putrescent matter, and from mixing any such matter with fresh or spent acids, at or upon the premises where said business is now conducted.

Given under my hand and the privy seal of the State,
at the Capitol, in the city of Albany, this twentieth day of July, in the year of our Lord one thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor :

DANIEL S. LAMONT,

Private Secretary.

NOTE.—Orders of similar character, and bearing the same date, were also issued to the following companies and persons : The Long Island Railroad Company, The Eastern Distillery Company, John Kehoe, Fred Hoffner, Kirchman & Sons, Benjamin Rosenweig, George Ackerman, E. R. & R. B. Livermore, Mayer & Lowenstein, James McGuinness, Emil Calman & Co., T. T. Lines, The New York Oil and Varnish Works (J. M. Gill & Co.), Simon Steinfels, Peter McArdle, Henry Berau, John & C. Muller & Co., George W. Baker, John Briggs, J. Barnett & Co., The Brooklyn Excavating Company, Walter Bownes, Seeley Brothers, Edward Smith & Co., Pratt & Lambert, H. D. Wade & Co., Bonnell & Valentine, Henry Elkin, C. Meyer, W. D. Wilson Printing Company (Limited), Reed & Co.

IN THE MATTER OF BENJAMIN W. DOWNING.
ORDER APPOINTING CHARLES S. FAIRCHILD
COMMISSIONER TO TAKE TESTIMONY.

STATE OF NEW YORK, }
EXECUTIVE CHAMBER. }

*In the Matter of the Charges preferred against Benjamin W.
Downing, District Attorney of the County of Queens.*

Charges having been preferred against Benjamin W. Downing, district attorney of the county of Queens, by J. Lee Smith, a citizen of the said county of Queens, and a written answer thereto having been made and filed in behalf of the said Benjamin W. Downing, I do hereby appoint Charles S. Fairchild, of the city and county of New York, commissioner to take the testimony and the examination of witnesses as to the truth of said charges; and I direct the Attorney-General to conduct the inquiry and examination before the said commissioner, first giving to the

said Benjamin W. Downing at least eight days' notice, in writing, of the time and place when and where he will proceed to the examination of witnesses before said commissioner.

Given under my hand and the privy seal of the
State, at the Capitol, in the city of Albany, this
[L. S.] twenty-third day of July, A. D. 1883.

GROVER CLEVELAND.

By the Governor :

DANIEL S. LAMONT,

Private Secretary.

ORDER TO REED & CO., MODIFYING ORDER OF
JULY 20, 1883.

STATE OF NEW YORK. }

EXECUTIVE CHAMBER. }

To REED & Co., 34 *Beaver street, New York city :*

Whereas, On the 20th day of July, 1883, a certain order was by me issued, and to you directed, in and by which order a certain business, being the manufacture and storing of fertilizers, as conducted by you in the county of Queens, was declared to be a nuisance, and you were required to change the manner of conducting said business in the particulars in said order specified ;

Now, therefore, I do hereby order and direct that said order be modified by adding to that part of the same which prescribes the manner in which the conduct of said business shall be changed, and after the word "premises"

the following words: "Unless kept covered, dry and disinfected."

Given, under my hand and the privy seal of the
[L. s.] State, at the Capitol, in the city of Albany, this
27th day of July, 1883.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,
Private Secretary.

NOTE.—Modified order also issued to C. Myer, July 31, 1883.

ORDER APPOINTING A COMMISSION TO EXAMINE
INTO THE MENTAL CONDITION OF WILLIAM
HENRY OSTRANDER.

STATE OF NEW YORK. }
EXECUTIVE CHAMBER. }

I hereby appoint Doctor Judson B. Andrews, of the city of Buffalo, and Doctor Edward N. Brush, of the city of Utica, commissioners to examine William Henry Ostrander, now confined in the Oneida county jail under sentence of death, and to report the facts as to the condition of the prisoner and their conclusions as to his sanity, to me in writing, on or before Tuesday, August seventh, instant.

Given under my hand and the privy seal of the State,
[L. s.] at the Capitol, in the city of Albany, this third
day of August, A. D. 1883.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,
Private Secretary.

PROCLAMATION OF REWARD FOR APPREHENSION
OF MURDERERS.

PROCLAMATION.

STATE OF NEW YORK. }

EXECUTIVE CHAMBER. }

Whereas, It has come to my knowledge that a person, supposed to be Patrick McCormick, was murdered at Island Park, in the county of Albany, on or about the fifteenth day of July, A. D. 1883.

Now, therefore, I do hereby offer a reward of five hundred dollars, to be paid for the arrest and conviction of the person or persons who committed the said crime.

Given under my hand and the privy seal of the State,
[L. S.] at the Capitol, in the city of Albany, this third day of August, A. D. 1883.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

Private Secretary.

REPORT OF COMMISSION APPOINTED TO EXAMINE
WILLIAM HENRY OSTRANDER.

UTICA, N. Y., *August 6th*, 1883.

To the Honorable GROVER CLEVELAND, *Governor*:

SIR: In accordance with the instruction contained in your commission directed to us, we have made a personal examination of the prisoner, William Henry Ostrander, now in the Oneida county jail under sentence of death.

We have also examined and heard Mr. Cronin, the jailor ;

Mr. Appleton, late jailor at Utica ; Mr. Anderson, late jailor at Rome ; Dr. Holden, jail physician at Utica ; Dr. Evans, jail physician at Rome ; Mr. Barnett, the prisoner's counsel, and others.

From our examination of the prisoner, and from the testimony of the above mentioned witnesses, we are of the opinion that the prisoner, William Henry Ostrander, is not insane, and respectfully so report.

J. B. ANDREWS.

E. N. BRUSH.

ORDER TO THE DISTRICT ATTORNEY IN THE
MATTER OF NUISANCES AT LONG ISLAND CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

TO BENJAMIN W. DOWNING, Esq., *District Attorney of the
County of Queens :*

Whereas, I, Grover Cleveland, Governor of the State of New York, did heretofore require the State Board of Health to examine into nuisances affecting the security of life and health in Long Island City, and in the town of Newtown, county of Queens, and the said the State Board of Health did thereupon make such examination, and did thereafter and on or about the 6th day of July, 1883, report the results of such examination to me, which report was duly approved by me and was thereupon filed in the office of the Secretary of State;

And, whereas, in and by the said report the said the State Board of Health did find and certify the business carried on in and about the locality aforesaid by the Preston Fertilizing Company to be a nuisance;

And, whereas, in accordance with the statutes in such case made and provided, and by virtue of the authority conferred upon me by chapter 322 of the laws of 1880, and the acts amendatory thereof, I did thereupon declare the business aforesaid, as carried on and conducted, to be a public nuisance, and did order the same to be abated and removed within one week after service of a copy of said order ;

And, whereas, such order has been duly served upon the persons aforesaid, and more than one week has elapsed since such service, and the aforesaid nuisance is still maintained ;

Now, therefore, in accordance with the statutes and by virtue of the authority aforesaid, I do hereby require you as district attorney of said county of Queens, to take all necessary measures to execute the order aforesaid and to secure the abatement and removal of such nuisance.

Given under my hand and the privy seal of the
State, at the Capitol, in the city of Albany, this
[L. s.] ninth day of August, in the year of our Lord
one thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor :

DANIEL S. LAMONT,

Private Secretary.

NOTE.—Orders of similar character were also issued in the cases of the following named delinquents : Henry Berau, Henry Elkin, Simon Steinfelds, John Kehoe, Fred Hoffner, Kirkman & Sons, George W. Baker, John Briggs, J. Barnett & Co.

PEREMPTORY ORDER TO ABATE A DECLARED
NUISANCE IN QUEENS COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

TO HENRY BERAU, *High Ground Park, Long Island, N. Y., and
all others whom it may concern :*

Whereas, I, Grover Cleveland, Governor of the State of New York, did heretofore require the State Board of Health to examine into nuisances affecting the security of life and health in Long Island City, and in the town of Newtown, county of Queens; and the said the State Board of Health did thereupon make such examination, and did thereafter and on or about the sixth day of July, 1883, report the results of such examination to me, which report was duly approved by me, and was, thereupon, filed in the office of the Secretary of State;

And, whereas, in and by the said report the said the State Board of Health did find and certify the business carried on in and about the locality aforesaid by the person hereinabove named, to be a nuisance;

And, whereas, in accordance with the statutes in such case made and provided, and by virtue of the authority conferred upon me by chapter 322 of the laws of 1880, and the acts amendatory thereof, I did thereupon declare the business aforesaid, as carried on and conducted, to be a public nuisance, and did order the same to be changed within fourteen days after the service of said order;

And, whereas, said order has been duly served upon said party and more than fourteen days have elapsed since the date of said service, and said business has not been changed as ordered by me;

Now, therefore, in accordance with the statutes hereinbefore referred to, and by virtue of the authority aforesaid, I do hereby order that the said business be discontinued and said nuisance be abated.

Given under my hand and the privy seal of the State,
at the Capitol, in the city of Albany, this twelfth
[L. s.] day of September, in the year of our Lord one
thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor :

DANIEL S. LAMONT,

Private Secretary.

NOTE.—Orders of a similar character were also issued to J. Barnett & Co., John Kehoe, Fred. Hoffner, Kirkman & Sons.

ORDER DIRECTING THE SHERIFF OF QUEENS
COUNTY TO ENFORCE CERTAIN ORDERS OF
EVEN DATE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

TO GARRIT FURMAN, *Sheriff of the County of Queens, and all
others whom it may concern :*

Whereas, I, Grover Cleveland, Governor of the State of New York, did heretofore require the State Board of Health to examine into nuisances affecting the security of life and health in Long Island City, and in the town of Newtown, county of Queens; and the said the State Board of Health did, thereupon, make such examination, and did thereafter and on or about the 6th day of July, 1883, report the results of such examination to me, which report was duly

approved by me, and was, thereupon, filed in the office of the Secretary of State ;

And, whereas, in and by the said report the said the State Board of Health did find and certify the business carried on in and about the locality aforesaid, by Henry Berau, namely, the business of rendering dead animals, to be a nuisance ;

And, whereas, in accordance with the statutes in such case made and provided, and by virtue of the authority conferred upon me by chapter 322 of the laws of 1880, and the acts amendatory thereof, I did declare the business aforesaid, as carried on and conducted, to be a public nuisance, and did order the same to be discontinued, and said nuisance to be abated by an order of even date herewith issued to said Henry Berau ;

Now, therefore, in accordance with the statutes hereinbefore referred to, and by virtue of the authority aforesaid, I do hereby require you, as sheriff of Queens county, to take all necessary measures to execute my said order, and to abate and remove said nuisance.

Given under my hand and the privy seal of the State,
at the Capitol, in the city of Albany, this 12th
[L. S.] day of September, in the year of our Lord one
thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

Private Secretary.

NOTE. — Orders of procedure were simultaneously issued as against J. Barnett & Co., John Kehoe, Fred. Hoffner and Kirkman & Sons.

ORDER OF REMOVAL OF BENJAMIN W. DOWNING,
DISTRICT ATTORNEY OF QUEENS COUNTY.

STATE OF NEW YORK, }
EXECUTIVE CHAMBER. }

*In the Matter of the Charges against Benjamin W. Downing,
District Attorney of the County of Queens.*

Charges of malfeasance and malversation in office against Benjamin W. Downing having been made and presented to me, and a copy of the said charges having been served on the said Downing, and his answer thereto having been filed, and testimony duly taken in support of said charges, and in behalf of said Downing in opposition thereto ;

Now, therefore, on reading said charges and the answer aforesaid, and the testimony so taken thereupon, and after hearing Leslie W. Russell, Attorney-General, in support of said charges, and James W. Covert, counsel for said Downing, in opposition to the same, I do hereby find and determine that the charges so made and filed are true; and

I do hereby order, upon such determination, that the said Benjamin W. Downing, for the cause aforesaid, be and he hereby is removed from the office of district attorney of the county of Queens.

Given under my hand and the privy seal of the State,
at the Capitol, in the city of Albany, this twenty-
[L. S.] fifth day of October, in the year of our Lord
one thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor :

DANIEL S. LAMONT,
Private Secretary.

STATE OF NEW YORK,
EXECUTIVE CHAMBER. }

*In the Matter of the Charges against Benjamin W. Downing,
District Attorney of Queens County.*

Upon the charges made in this case and the answer, and the testimony which has been taken, the following facts are undisputed :

On the 12th day of September, 1882, James Riley was indicted in Queens county for manslaughter, in killing with a knife, Robert E. Desmond, on the twenty-eighth day of August, 1882. Michael Desmond was the father of Robert E. Desmond ; John M. Desmond was his brother, and Mrs. Riley, the wife of the accused, was his sister.

Two checks for one hundred dollars each, signed by Michael Desmond, one dated December 8, 1882, and the other January 20, 1883, were delivered on the days they respectively bore date, by John Desmond to somebody connected with the District Attorney's office of Queens county, and the latter of said checks was delivered to said District Attorney, Benjamin W. Downing.

On the 12th day of December, 1882, the said James Riley was tried on the indictment against him for manslaughter, and the jury failed to agree upon a verdict.

On the 8th day of January, 1883, a new indictment was found against said James Riley, charging him with murder in the first degree, which indictment was substituted for the one upon which he had already been tried.

On the 15th day of January, 1883, the trial of the accused upon the second indictment was commenced, which trial resulted in a verdict of guilty of murder in the second degree.

On the 2d day of February, 1883, this verdict was set

aside by the judge who presided at the trial, on the ground that certain evidence offered on behalf of the prisoner, was, on said trial, improperly rejected.

On the 9th day of April, 1883, the accused pleaded guilty to manslaughter in the third degree, by consent of the court and district attorney, and was thereupon sentenced to be imprisoned in the State prison for the term of four years.

Michael Desmond and J. M. Desmond, the father and brother of the man killed, were very much dissatisfied with the acceptance of this plea, and at once employed Charles S. Spencer, an attorney living in New York, to recover of the District Attorney, Mr. Downing, the amount of the two checks which they had given, as before stated, and they thereupon delivered to said Spencer, the two said checks which had been paid and canceled by the bank upon which they were drawn, and returned to the said Michael Desmond.

On the 14th day of April, 1883, Mr. Downing paid to a clerk in Mr. Spencer's office, who had been sent by Mr. Spencer to receive the same, the sum of two hundred dollars in currency, and upon said payment, received from said clerk and destroyed the said two checks so originally given by said Desmond.

The disputed questions presented are, to whom was the check dated on the eighth of December, 1882, on that day given, and for what purpose were the said two checks given and received?

On the part of those who prefer the charges, it is claimed that the checks were made by the father and delivered by the brother of the man who was killed, to the District Attorney himself, and by him accepted, for the purpose of stimulating his zeal in the prosecution of the indictment,

and to influence his official action against the prisoner, to the end that a conviction for the highest offense possible, and the infliction of a severe punishment might be secured.

On the part of the respondent it is insisted that the check dated December 8, 1882, was given to one Samuel Johnson, a clerk in his office, and that its receipt by him was unknown to the District Attorney until just after the indictment was disposed of by the plea of guilty, on the 9th day of April, 1883, when he obliged Johnson to give the money received upon the check to him; and that this sum being one hundred dollars, made a part of the two hundred dollars afterwards refunded by Mr. Downing to Mr. Spencer's clerk. As to the check for one hundred dollars, dated January 20, 1883, the respondent claims that it was handed to him by John M. Desmond, with the express understanding that it was to be paid out for detective services or for stenographer's minutes; and that he did pay to one Marra, a constable, at different times, the sum of thirty-two dollars, for such detective services.

The evidence presented to me upon the questions thus disputed, is quite voluminous, and much of it very contradictory. I have examined it all with the utmost care, and I confess, with the hope that I should be led to conclude that the charges against this public officer were not sustained.

The fact of the delivery of these checks by John M. Desmond, the brother of the man killed, to the District Attorney himself, and their receipt by him, with the intent of stimulating his zeal in the prosecution of a charge of homicide, against the man charged with the killing, is testified to by said Desmond, and he is corroborated to a great extent by two other witnesses.

That the relatives of the deceased were willing to give money to satisfy, through the forms of the criminal law, their malice and feelings of vengeance, is not creditable to them; and yet their testimony should not for that reason alone be discredited.

Check books belonging to Michael Desmond are produced in evidence, containing check stubs, from which it appears that checks were given on the 8th of December, 1882, and the 20th of January, 1883, for the sum of one hundred dollars each, payable to the order of Benjamin W. Downing.

That both of the checks bore the indorsement of Mr. Downing, when they were returned paid and canceled to the drawer from the bank upon which they were drawn, is testified to by the two witnesses who drew and delivered the checks, and, in a most positive manner, by another entirely disinterested witness, who had the best possible means of knowing the fact, and who can hardly be mistaken.

The fact that Mr. Downing repaid the amount of both checks, to an attorney who was employed by Mr. Desmond to recover the same, is to my mind not satisfactorily explained, except upon the theory that the checks were delivered to Mr. Downing and for the purpose charged.

The fact that soon after the date of the first check, the indictment for manslaughter was abandoned, and one for murder substituted in its stead, has, I think, notwithstanding an attempted explanation, a bearing not only on the question of the receipt of that check by Mr. Downing, but also on the purpose for which it was received.

There are a number of other facts and circumstances proved on this examination, which, in my opinion, greatly strengthen the theory of the charges. And I am obliged to say that all the inferences, arising from the known circum-

stances, and based upon the rules which regulate human action and which accord with experience in life, are consistent with the truth of such charges.

On the other hand, the testimony of the clerk of the District Attorney, that he himself received the check of December 8, 1882, is, to say the least of it, very unsatisfactory and unconvincing; and if true, places him in a very unenviable position. It fails to satisfy me that Mr. Downing did not receive this check, as does the testimony of Mr. Downing himself.

And I cannot for a moment entertain the belief that either of these checks was received by him for the purpose of paying for detective services connected with the prosecution of the indictment. The preponderance of evidence, I consider very largely against such a claim. It is inconsistent with the established facts, and with his conduct, as proved and admitted by him.

I have examined the testimony on both of the trials for the homicide, and I think no one at all acquainted with criminal law can see in the case much chance for the employment of detective skill.

The deceased and the prisoner engaged in an affray, the beginning of which was witnessed by two parties. The prisoner inflicted upon the other six wounds with a knife, two of which were necessarily immediately fatal. The prisoner was, within a very short time, arrested by an officer, and before he left the room where his victim laid; and the bloody knife was found on the spot. He admitted the killing at the time, and it was a fact conceded on both trials. As in most such cases, it became the duty of the officer having charge of the case, to discover, if possible, whether prior threats had been made by the prisoner.

against the deceased. But I do not think this can properly be called detective work, such as to require the payment therefor by private parties interested in the prosecution.

The officer who did this pretended detective service, and for whom it is claimed that the money was received, sums up his work as follows: "I arrested the man; I went around with Mr. Downing twice all through Dutchkills" (the neighborhood of the killing); "I went into liquor stores—every place that I knew that this man was, and followed him up from that night going down—and I got some evidence that wasn't allowed on the first trial, and I served the subpœnas."

For the arrest of the prisoner and serving subpœnas, and the travel necessary for that purpose, the county must pay, by statute; and I suppose the law is still in force, authorizing the boards of supervisors to pay for such other services in criminal cases as have no fixed fees attached to them.

There were ten witnesses sworn for the prosecution on each trial, and they were the same in both, with two exceptions. A majority of them were relatives of the man killed or peace officers.

The amount charged to be taken by the District Attorney in this case is comparatively small; but that does not lessen the offense. The duty which presses upon me to determine the question presented cannot be avoided. And in the exercise of all the judgment I possess, guided, I know, by a desire to do no injustice, I am forced to the conclusion that the charges made are sustained, and that the officer complained of should be removed.

The office of public prosecutor is one of great importance and responsibility. The security and protection of society,

is to a great extent in his keeping, and there should be exacted of him zeal in the prosecution of those who violate the law, and a shrewd intelligence and activity in securing their punishment. The demoralizing effect of allowing an officer of this description to receive or exact compensation from individuals, for the performance of the duty which he owes the public, is inevitable and dangerous.

But this is also an office of great power. The contest between the people, represented by the District Attorney, with all the instruments of the criminal law at his command, and a party accused of crime, is often unequal; and an unscrupulous use of the advantage which a prosecuting officer holds, leads to injustice and oppression.

Thus the office of District Attorney is of a *quasi* judicial nature, to be administered with zeal and intelligence, and at the same time with fairness to the accused and a due regard to his rights.

The public prosecutor, who, for a pecuniary or other consideration, lends himself and his official place to the gratification of private malice or the satisfaction of individual vengeance, is, in my opinion, not less guilty of malfeasance than when he, upon a like consideration, violates his duty to the public, and allows crime to go unpunished.

GROVER CLEVELAND.

PROCLAMATION OF THANKSGIVING.

STATE OF NEW YORK.

P R O C L A M A T I O N

BY GROVER CLEVELAND, GOVERNOR.

The People of our State should continually be mindful of their dependence upon the Supreme Ruler of the universe, and grateful for His goodness and mercy. Without His guidance, the efforts of man are in vain; and from His forbearance and kindness comes every good gift.

And while they should thus hold in constant remembrance the debt of gratitude they owe, it is fit and proper, and in accordance with established custom, that a day should be annually set apart for their special and public acknowledgment of the goodness of God.

We cannot fail to recall, at this time, abundant cause for thankfulness. During the year just passed, we have been protected against pestilence and dire calamity; peace and quiet have reigned within our borders; the supremacy of law and order has been complete; plenteous crops have rewarded the toil of the husbandman; the hum of busy manufacture has been uninterrupted; industry in every department of labor has brought its just reward; enterprises of great magnitude have been completed, adding wealth and greatness to the State; and we have advanced in all that pertains to the material, social and educational interests of our people.

I, therefore, hereby designate and set apart Thursday, the 29th day of November, 1883, to be observed by the people of this State as a day of Thanksgiving to God for all His mercies, and humble supplication to the Throne of Grace for a continuance of Divine favor.

On that day let all within the State put aside their business cares and ordinary employments, and assemble in their places of worship and join in prayer and praise.

And let us be prompted to deeds of charity, by the acknowledgment of the gifts of God; and while we ask of Him, let us not close our hearts to the appeals of poverty and distress.

Done at the Capitol, in the City of Albany, this
twenty-ninth day of October, in the year of our
[L. S.] Lord, one thousand eight hundred and eighty-
three.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,
Private Secretary.

PROCLAMATION AGAINST VIOLATION OF LAWS GOVERNING ELECTIONS.

STATE OF NEW YORK.

P R O C L A M A T I O N

BY GROVER CLEVELAND, GOVERNOR.

The Constitution of the State directs that the Governor "shall take care that the laws are faithfully executed."

An appeal has been made to the Executive, asking that the laws relating to bribery and corruption at elections be enforced. All must acknowledge that there is nothing more important in our form of government than that the will of the people, which is absolutely the foundation upon which our institutions rest, should be fairly expressed and honestly regarded. Without this, our system is a sham and a contri-

vance, which it is brazen effrontery to call a republican form of government.

All this is recognized, in theory, by provisions in the Constitution of our State, and by stringent penal enactments, aimed at the use of money and other corrupt means to unlawfully influence the suffrages of the people and to thwart their will. And yet I am convinced that a disregard of those enactments is frequent, and in many cases shamelessly open and impudent.

I, therefore, call upon all District Attorneys within this State, and all Sheriffs and peace officers, and others having in charge the execution of the laws, to exercise the utmost diligence in the discovery and punishment of violations of the statutes referred to, and they are admonished that neglect of duty in this regard will be promptly dealt with.

And I request that all good citizens, in the performance of a plain duty, for the protection of free institutions and in their own interests, report to the proper authorities the commission of any offense against the statutes passed to preserve the purity of the ballot.

Done at the Capitol, in the city of Albany, this second
day of November, in the year of our Lord, one
[L. s.] thousand eight hundred and eighty-three.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

Private Secretary.

SUPPLEMENTAL ORDER TO READ & CO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }

To READ & Co., 34 *Beaver street*, *New York City* :

Whereas, On the 20th day of July, 1883, a certain order was by me issued apd to you directed, in and by which order a certain business, being the manufacture and storing of fertilizers, as conducted by you in the county of Queens, was declared to be a nuisance, and you were required to change the manner of conducting said business in the particulars in said order specified;

Now, therefore, I do hereby order and direct that said order be modified by substituting in the place of the directions in said order contained, as to the conduct of the business therein mentioned, and after the word "changed" the following words: "in these particulars; that from and after the service of a copy of this order, no animal matter shall be used in any way in the manufacture of fertilizers at or upon the premises where the said business is carried on, unless it be so used in a dry state, and without the admixture of acids, and that all such animal matter stored or remaining upon said premises, shall be kept covered, dry and disinfected, and that in any event the manufacture of said fertilizers or the storing of materials therefor, shall not become a nuisance."

Given under my hand and the privy seal of the State, at the Capitol, in the city of Albany, this
[L. S.] 27th day of November, 1883.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

Private Secretary.

APPENDIX.

STATEMENT

OF

Pardons, Commutations of Sentence

AND

Reprieves Granted by the Governor

DURING THE YEAR 1883.

PARDONS.

January 18. Winchester M. Clark. Sentenced July 16, 1880; county, New York; crime, grand larceny; term, four years; prison, Kings County Penitentiary.

This convict was pardoned upon the sole ground that he had a very short time to live, being in the last stage of consumption. His near relatives, who were people of respectability, urged that he might be allowed to die at home, surrounded with such comforts as they alone could give. The evidence presented to me as to the prospect of his early demise was fully sustained by the prison physician, and inasmuch as he had served the greater portion of his time, allowing commutation for good conduct, I determined to pardon him, believing that the ends of justice would not suffer. The pardon was recommended by the District Attorney who prosecuted the indictment.

February 3, 1883. Michael Callihan. Sentenced November 10, 1873; county, Monroe; crime, rape; term, seventeen years; prison, State Asylum for Insane Criminals, transferred from Auburn Prison.

This pardon was granted on the sole ground that the convict had but a short time to live, and his sister, who was entirely respectable and possessed a good home, urged that she might be allowed to take him there to die. The records of the prison showed that his conduct had been good. At the time of his pardon he was in the State Asylum for Insane Criminals. The Superintendent of that institution certified that his mind was entirely lost, that no harm could

come from his release, and that he could live at longest but a few weeks. Inasmuch as he had served nearly his whole term, allowing commutation for good conduct, I felt that the ends of justice would not suffer by his release.

February 14, 1883. James Johnson. Sentenced October 20, 1870; county, New York; crime, robbery first degree; term, fifteen years; prison, Sing Sing.

This convict was pardoned upon the grounds:

That but for his so-called escape his good conduct would have entitled him to a discharge March 20, 1880.

His escape consisted in his merely taking advantage of the liberty very improperly accorded him by the prison authorities, and was not attended with any breaking of prison, force, violence or fraud.

He was absent from the prison after such escape and before recapture, one year, four months and twenty-two days. If that be added to the term as shortened by deduction for good behavior, such period would have expired August 11, 1881.

He therefore suffered nearly one year and six months for the escape.

His conduct, except the escape, had been uniformly good.

He was a man of intelligence, and it was believed would make a good citizen.

Many citizens and the prison authorities urged his release, and employment was assured for him at once.

February 22, 1883. John G. Healy, *alias* Joseph Harris. Sentenced June 22, 1882; county, Onondaga; crime, grand larceny; term, five years; prison, Auburn.

This pardon was granted upon the grounds that it was

recommended by the District Attorney and the Judge before whom the convict was tried. It also clearly appeared that he was not guilty of the crime of larceny, and with proper attention on the part of those who undertook to defend him, and were paid for so doing; he would not have been convicted.

It appearing that the primary and leading cause of this young man's trouble was the intemperate use of intoxicating liquors, this pardon was granted only upon condition that the said John G. Healy, *alias* Joseph Harris, should totally abstain from the use of intoxicating liquor during the remainder of the time for which, but for this pardon, he would have been liable to imprisonment; and in the event of his not complying at all times with this condition, this pardon should cease and become inoperative, and he should be arrested and imprisoned according to this sentence.

March 7, 1883. Mary Haney. Sentenced December 15, 1877; county, Wyoming; crime, arson, first degree; term, life; prison, Erie County Penitentiary.

This pardon was granted upon the grounds:

That the offense alleged to have committed, was not arson but an attempt to commit that crime, and clearly not arson in the first degree.

The preponderance of evidence given upon the trial showed that the fire was set after daylight, and the District Attorney offered to accept a plea of arson in the second degree, which was refused by the counsel for the defendant on the ground that she must be convicted or acquitted of the offense charged.

The pardon was strongly recommended by the officers who presided at the trial.

The convict was an old woman about seventy years of age, who had been constantly ill, requiring continuous care and attention since her incarceration.

The time she had already served, allowing the usual deduction for her good conduct, fully satisfied the demands of justice for the crime of arson in the second degree.

A lady who took a deep personal interest in this convict, agreed to immediately on her release, suitably provide and care for her during the remainder of her life.

March 15, 1883. Park Wheeler. Sentenced December 15, 1877; county, Onondaga; crime, forgery first degree; term, fifteen years; prison, Auburn.

This pardon was granted upon the ground that it was recommended by Judge Riegel, who presided at the trial, Harrison H. Hoyt, who conducted the prosecution on behalf of the people, and by a large number of influential citizens of Syracuse. I was satisfied from all the circumstances of the case that the imprisonment already suffered answered the ends of justice, and that the welfare of the public would not suffer by the prisoner's release, while it may be the means of restoring him to usefulness in the community. The condition of the prisoner's aged father and mother and his own as well, has been considered in this exercise of Executive clemency.

It appearing that the long continued and inordinate use of intoxicating liquors by this unfortunate man was one of the primary and leading causes of his downfall from a plane of the highest respectability, this pardon was therefore granted only upon the condition that the said Park Wheeler should totally abstain from the use of intoxicating liquors for the period of five years from the date hereof.

April 6, 1883. William Van Wart. Sentenced June 6, 1877; county, New York; crime, petit larceny from the person; term, five years; prison, Sing Sing, transferred to State Reformatory.

This pardon was granted upon the grounds:

This young man was sentenced when but twenty years of age to the Sing Sing State Prison, from which he was soon thereafter drafted by the managers of the State Reformatory under the statute providing for the removal of certain of the most youthful and promising convicts in State prisons for the purpose of a reformatory education.

At the time of his reception into the Reformatory the walls were unfinished, and in the course of a few months he escaped. After an absence of nearly two years and six months he voluntarily returned and delivered himself to the authorities, being persuaded of the justice of his sentence, and willing to receive the punishment decreed by the State for the offense he committed.

By this escape he was precluded under the statute from earning any commutation, though his conduct had at all times been most exemplary during his incarceration.

His progress in the reformatory had been such as to meet the warmest approval of the Superintendent, and to cause the latter to recommend him as worthy of Executive clemency.

The District Attorney of his county, as well as many other prominent and respectable people, also recommended his release.

Inasmuch as the time he had actually been incarcerated nearly equaled the term for which he was sentenced, less his legal deduction for good conduct, such deduction was restored to him in the full confidence by the Executive that he will be encouraged to lead a life of future well-doing.

April 23, 1883. George Lawrence, *alias* Charles McGuire. Sentenced July 3, 1882; county, Kings; crime, burglary; term, two years and six months; prison, Kings County Penitentiary.

This pardon was granted upon the grounds:

That it appeared to my satisfaction from the certificate of the penitentiary physician that the prisoner was incurably ill with consumption, and that he had but a few days to live.

That it was the prisoner's first offense; that he had served a considerable portion of his sentence, and that his conduct in prison had been good.

His pardon was recommended by the Judge who presided at his trial, upon the ground of his incurable illness.

May 12, 1883. Harris Scull. Sentenced May 4, 1883; county, New York; crime, burglary third degree; term, one year; prison, New York Penitentiary.

This pardon was granted upon the grounds:

That it satisfactorily appeared that the prisoner had previous to his arrest for the offense charged, borne a good character, had been a hard-working mechanic and had faithfully cared for his family to the best of his ability.

That at the time of the commission of the offense he had been out of employment a considerable time, and that his wife and children were actually in a destitute condition.

That the property of the complainant was restored by the prisoner.

Executive clemency was strongly recommended by the District Attorney who prosecuted the case for the people and by the Judge who presided at the trial.

June 5, 1883. John Glass. Sentenced September 28, 1870; county, New York; crime, manslaughter, first degree; term, life; prison, Sing Sing. Indicted for murder.

The wound resulting in the death, was made in the midst of a quarrel between the deceased and the prisoner, and with a knife caught up by the prisoner as it chanced to come to his hand. The cutting was in the groin, from which fatal results might not necessarily be expected.

The jury by failing to find the prisoner guilty of murder, negatived any premeditated design to effect death, and the killing having so evidently been done in the heat of passion, with a weapon, it seemed to come within the definition of manslaughter in the third degree. The prisoner had already suffered a much longer imprisonment than could have been lawfully inflicted upon him for that offense.

The convict seemed to have been poor, and, in one sense, friendless, though a number of good citizens interested themselves in his case because they felt his longer imprisonment would have been unjust.

His conduct in prison was very good, and the prison officials joined in the application for his pardon.

I had the opinion of legal gentlemen to the effect that the charge of the court was not such as to clearly present to the minds of the jurors the different degrees of murder and manslaughter, their relation to the crime for which he was indicted, and the facts developed on the trial.

In this opinion I concurred, and the pardon was granted on the ground that the convict had already suffered longer than he should have done, upon the facts developed by the proofs and under the laws of the State.

June 6, 1883. James E. Tompkins. Sentenced January 19, 1883; county, Erie; crime, petit larceny — three charges; term, one year in the aggregate; prison, Erie County Penitentiary.

This young man at the time of his arrest was in the employ of the Western Union Telegraph Company at Buffalo, as an operator, and had up to that time borne an excellent character, earning quite a large salary and contributing a part of it to the support of his mother in Canada.

He pleaded guilty to three charges of petit larceny, and was sentenced on all the charges upon the theory that he was employed as a clerk in the store from which the property was stolen, but the fact was that he occupied the same room with the thief and had no other connection with him. A small part of the property alleged to have been stolen was, however, found in his possession, and he was probably guilty of receiving stolen property.

His sentence was the same as that of the clerk who betrayed the trust of his employers, and actually stole all the property, the supposition being, upon his plea of guilty, and in the absence of inquiry as to the facts, that both were in the same employ and participated in the stealing.

This explanation was furnished by the police justice who sentenced the convict, and who asked that he be pardoned, in which he was joined by the owners of the store from which the goods were stolen, and the employers of the young man, together with a number of respectable citizens.

June 9, 1883. Ira J. Boardman. Sentenced December 17, 1880; county, Chenango; crime, rape; term, five years; prison, Auburn.

His application for pardon was signed by a great number of the citizens of Chenango county, in which county he was convicted.

It appeared that a brother of the convict and another young man took the prosecutrix in a buggy from the village of Green, in the county of Chenango, to a place five miles distant, where the convict worked, and called him out of the house, it being late at night, and the three of them took the girl to a barn where all had connection with her, against her will, as she asserted.

The character of the prosecutrix appeared not to have been above suspicion.

Three of the jurymen, upon the trial, made affidavits to the effect that the jury were not satisfied that the crime had been fully made out, but an agreement was reached upon the supposition that the court would sentence the prisoner to the State Reformatory for a short term.

The brother was subsequently tried and acquitted, and the third party implicated was discharged.

The judge before whom the prisoner was convicted said that while he thought the jury were justified in their verdict, if subsequent evidence had shown the others were innocent, then the prisoners should not have been convicted, and that if executive clemency should be extended to him it would not be an improper use of the pardoning power.

The District Attorney who prosecuted the case said he hardly expected a conviction, and if he had been on the jury he would not have consented to a verdict of guilty.

During his incarceration the prisoner had his right arm amputated between the elbow and wrist, which was made necessary by an injury received while in prison. In consequence of the operation his health became much impaired, and the physician wrote that he almost despaired of his recovery, though with his freedom the prospect of his regaining his health would be much improved.

On the whole, I became entirely satisfied that it was my duty to grant the pardon.

June 11, 1883. Frederick Savage. Sentenced May 15, 1880; county. Oswego; crime, perjury; term, ten years; prison, Auburn.

The charge was predicated upon testimony given by the accused in the course of a criminal trial which took place in December, 1879.

At the time of his conviction the prisoner was but eighteen years old.

Upon a careful examination of the facts presented to me upon this application, I could not rid myself of a doubt as to his guilt.

The jury in the case were unable to agree as to his guilt after a long deliberation, and the verdict against the prisoner was obtained by means and in the jury room, which subject the jury themselves to criticism, and which should subject some other party or parties to severe punishment.

The pardon was recommended by a large number of the most prominent and respected citizens of Oswego, and it seemed to be conceded that up to the time of his conviction of this offense his character was in all respects good.

The District Attorney who prosecuted the case also recommended the pardon in the most unqualified manner.

June 14, 1883. John Shaver. Sentenced September 12, 1881; county, Schenectady; crime, burglary first degree; term, ten years; prison, Clinton.

The convict was seventy years of age.

His pardon was asked for by a very large number of the citizens of Schenectady, where he lived.

His character up to the time of his arrest seems to have been very good.

He appeared concededly to have been drawn into the transaction, made the basis of the conviction against him, by his daughter.

The opinion seemed quite general that he was guilty of no crime.

The Judge and District Attorney strongly solicited the pardon, and the judge expressly said that he was convinced he should not have been convicted of burglary.

His conduct in prison was good and his health was poor.

June 14, 1883. Walter McBraden, *alias* Walter Grattan. Sentenced May 23, 1883; county, Erie; crime, petit larceny; term, sixty days; prison, Erie County Penitentiary.

This pardon was granted on the grounds:

That the merits of the application were fully reported to me, with a recommendation of Executive clemency, by a judge of one of the highest courts of the State, the case of the prisoner having previously been before him on a writ of *habeas corpus* sued out on a technicality from which relief could not legally be granted. It appeared, to say the least, that there was extreme doubt as to his guilt; the property claimed to have been stolen consisting of clothing of small value, which was shown by those acquainted with him to have been his own.

It also appeared that his mother was, at the time of his release, extremely ill from the effect of her son's imprisonment, and it was feared that his long continued incarceration for a crime of which she fully believed him innocent, would affect her seriously.

June 18, 1883. Joseph Leachman. Sentenced April 25, 1883; county, Herkimer; crime, intoxication; twelve dollars fine or term of four months; prison, Albany County Penitentiary.

The prisoner was represented to be sixty-seven years of age and as having a wife and four children. Being too poor to pay even the small amount of the fine imposed, he was committed to the penitentiary where he was confined for nearly two months.

I was informed that the prisoner was not found intoxicated in a public place, which, as I understand the law, is necessary to constitute the offense of which he was convicted; also, that it was the first time he ever was brought before a magistrate.

I believed, upon an examination of the facts, that the trial, conviction and sentence of the prisoner presented an instance far too common, of the heedless abuse of the administration of criminal law. The part taken by the magistrate was mitigated by the fact that he applied for the pardon of the prisoner, and at that late day acknowledged that the course pursued by him was wrong.

Being entirely of his opinion, I unhesitatingly granted the pardon.

June 19, 1883. Perry Fitzgerald. Sentenced July 13, 1880; county, Saratoga; crime, arson, third degree; term, four years; prison, Clinton.

The application for the pardon of this convict was personally made to me by the District Attorney who procured his conviction, and who strongly urged his pardon on the following grounds, of which he was personally cognizant:

That the convict's brother was dying with consumption and had but a few days to live, and had expressed a

strong desire to see his brother then in prison, before he died.

That the term of the convict had nearly expired, he having at the date of the granting of the pardon, less than one month to serve.

July 6, 1883. George Burke. Sentenced May 10, 1883; county, Kings; crime, burglary, third degree and grand larceny; term, one year and six months; prison, Kings County Penitentiary.

This pardon was granted on the grounds :

That the convict had never been previously charged with or convicted of crime, and that his previous character had been good.

His term of imprisonment had nearly expired, he having but little over a month to serve.

It further appeared from unquestionable authority that the prisoner was dying from consumption, and his condition was such at the time of granting the pardon that he could live but a few days at the most.

I was also assured that his parents who are highly respectable, were fully able to care for him on his release from prison, for the few remaining days of his life.

July 10, 1883. John Meeker, *alias* John Mager. Sentenced January 18, 1883; county, Orange; crime, manslaughter third degree; term, one year; prison, Sing Sing.

This convict was sentenced January 18, 1883, upon a plea of guilty of manslaughter in the third degree, to be imprisoned in Sing Sing prison for one year. He was indicted jointly with one John Karlson, who was tried and convicted of murder in the second degree. Upon this trial all the evi-

dence touching the homicide, which could be discovered, was adduced, and Meeker was sworn as a witness for the prosecution. As this evidence was reported to me, it was, in my opinion, clearly insufficient to establish any participation on the part of Meeker in the commission of the offense.

The judge who presided at the trial wrote as follows :

"If there was no other evidence to connect Meeker with the crime than was shown on the Karlson trial, it would have been insufficient, in my judgment, to have warranted a conviction."

The District Attorney who prosecuted the indictment wrote :

"I was not able to find any testimony—though I sought carefully—which would enable me to convict Meeker of any participation in the murder. I do not think I should have gone to trial on his indictment—unless, perhaps, for the purpose of putting the responsibility on the jury."

The convict was an ignorant man, and understood the English language very imperfectly. The plea of guilty was entered on his behalf by counsel, while the accused himself had at all times, as well as he could, protested his innocence. His counsel explained the course pursued by representing that while they believed their client entirely innocent, they feared a conviction of a higher crime in case of a trial. Since his sentence the wife of the convict had become insane, and she and her three children were supported by charity. It was represented to me that the condition of his wife and family and his unjust imprisonment had unsettled the mind of the convict himself. I was entirely satisfied that in this case a pardon should be granted.

July 14, 1883. George Nagle. Sentenced September 24, 1875; county, Erie; crime, grand larceny after felony; term, fourteen years; prison, Auburn.

This pardon was strongly recommended by the District Attorney who prosecuted the indictment against the prisoner.

It appeared that the offense charged was committed jointly by the convict and another, the latter being sentenced to only one and one-half years' imprisonment, while this convict received the long sentence of fourteen years on account of a conviction for a former offense.

It also appeared, to my satisfaction, that the parents of the convict had died during his imprisonment, leaving his two sisters wholly unprotected and unprovided for.

For the reasons above stated, and inasmuch as the prisoner's conduct had been such in prison that the greater portion of his sentence had expired by reason of commutation for good behavior, as provided by statute, I felt that the ends of justice could not suffer, but rather be promoted by his release from prison.

July 20, 1883. George Rogers, *alias* James Wilson. Sentenced October 3, 1881; county, Kings; crime, forgery; term, three years and six months; prison, Kings County Penitentiary.

The application for the pardon of this young man was supported by the certificates of a number of parties in whose employ he had been, and a former teacher, all of whom bore testimony to his good character. The judge who sentenced him and the District Attorney who prosecuted the indictment, also favored his pardon. My sympathy was moved by the distress of the convict's mother, his only living parent, who was then represented to be in very poor health.

But notwithstanding all this, upon a full examination of

the case, I was so fully convinced that the prisoner had, at the time of his arrest, entered upon a career of crime, and that his own good and the protection of society would not be subserved by his release, that on the 11th day of June, 1883, I denied the application for his pardon.

I was asked on the 20th of July, 1883, to reconsider my action.

The convict's mother died the day before, and his uncle and aunt whom I was satisfied were respectable and worthy people, promised to give him a home and employment.

I could not refuse, in view of the additional and saddening circumstances presented, to allow this prisoner to look upon the face of his dead mother and avail himself of the opportunity offered to regain a respectable place in society.

I hastened to place the pardon in the hands of his aunt, who personally applied for it.

July 23, 1883. William C. Jamison. Sentenced February 8, 1883; county, Kings; crime, attempting grand larceny; term, six months; prison, Kings County Penitentiary.

This convict was intrusted with a race horse to enter in races for the benefit of the owner. He took the horse to South Carolina as it is alleged, without the consent of such owner, and there disposed of an interest in the same. The prisoner was convicted of grand larceny, but the conviction was set aside by the court. Afterwards he pleaded guilty to an attempt to commit grand larceny upon the assurance, as I was then informed, that he should be quickly released if the pecuniary loss suffered by his act should be made good.

It was represented that this had been done. The judge who tried and the District Attorney who prosecuted the

prisoner, joined in declaring that in their opinion the exercise of clemency in this case would be proper; and the report from the penitentiary was that the health of the convict was not good, and that he had behaved well during his imprisonment. There was also presented to me evidence that his character was good prior to his conviction. The term for which he was sentenced would have expired on the 7th day of August, 1883.

In view of all the facts I determined to remit by pardon the remaining fifteen days of his term.

July 24, 1883. Francis Lobardo. Sentenced November 16, 1882; county, New York; crime, assault to harm; term, four years and six months; prison, Sing Sing.

This convict was indicted and tried jointly with one Sarsfield, and both were convicted of an assault with intent to do bodily harm. Upon this conviction Lobardo was sentenced on the 16th day of November, 1882, to be imprisoned in the State prison at Sing Sing for the term of four years and six months.

I was furnished all the minutes of the trial, which I carefully read.

The assault made was a violent and dangerous one. All the testimony in any way connecting Lobardo with the offense is found in the evidence of the complainant, who said that he struck him with a stick, and that Sarsfield inflicted a number of wounds upon him with a knife.

Considerable testimony was produced upon the trial, besides the evidence of both the prisoners, which tended strongly to establish the theory that the prosecutor was mistaken and that Lobardo was not present when the assault was made. I was furnished with affidavits of par-

ties who were not sworn upon the trial, which, with the evidence above referred to, so impressed me with the belief that a mistake had been made, that I deemed it my duty to pardon the convict.

July 27, 1883. Daniel Mahoney. Sentenced December 18, 1879; county, Oswego; crime, rape; term, ten years; prison, Auburn.

This convict was indicted, with others, for the offense of rape, but he only has been tried. There could be no pretense that his participation in the transaction was more culpable than the others. The facts developed upon the trial did not so fully exclude doubt as to the 'guilt' of the prisoner as is desirable in such cases. One witness whose testimony was important to the defense, and who was convicted of perjury in giving such evidence, has since been pardoned upon the theory that the evidence so given by him was probably true.

Other facts and circumstances, after the conviction of Mahoney, were brought to light which created a very general sentiment in the community where the conviction was had, that he was innocent of the crime alleged against him.

His pardon was recommended by the judge who sentenced and the District Attorney who prosecuted the convict, as well as by the police authorities who investigated the case. It was also asked by a large number of citizens, including many public officials who had acquainted themselves with the facts, and who expressed themselves as satisfied of the innocence of the prisoner. He had already been confined in prison more than three years and a half; his conduct during his confinement has been good, and prior to his

conviction, I am told, he maintained a respectable character in the community where he lived.

Upon a full examination of all the facts within my reach relating to this case, I was convinced that justice required the release of the convict.

July 28, 1883. Charles E. Schuyler. Sentenced October 23, 1879; county, Erie; crime, abduction; term, seven years; prison, Auburn,—transferred to State Asylum for Insane Criminals.

The abduction charged in this case consisted of inducing a young girl to accompany the accused to a room and there obtaining from her a written message to her father asking him to pay a sum of money to procure her release. No indignity was offered nor were threats made. The whole affair was so conducted by the prisoner as to insure detection, and the failure of his efforts to thus obtain money.

He was a stranger in the city of Buffalo, where the offense was committed, and being without money or friends, counsel was assigned to defend him. His sanity was questioned at that time, but as little or nothing could be learned of his antecedents he was advised to plead guilty to a charge which he apparently could not deny or successfully defend. The District Attorney wrote that "the means to which he resorted would seem to indicate that the fellow was not in his right mind."

On the 1st day of June, 1880, he was pronounced insane and transferred from the prison to which he had been sentenced, to the Asylum for Insane Criminals, where he still remained.

I discovered upon investigation, that the convict was a telegraph operator with an hereditary inclination to insanity,

which seems to have been developed by overwork and the death of his father. Upon the occurrence of the latter event, he became very despondent and soon after left his mother and sisters without notice as to his plans and they heard no more of him till his arrest.

One of the physicians at the asylum wrote that the convict was under his personal care from June 1, 1880, to January 1, 1882. After describing his condition when received, he said: "Under treatment he improved quite speedily and became in the judgment of the writer, substantially well. In view of this, and of the fact that sometime prior to the criminal act he had been greatly depressed by the death of his father, which placed upon him the support of his mother and younger sisters, and had been reduced physically by over-work as night telegraph operator, the writer has been firmly of the opinion that an unsettled mental condition, due to the above causes, led, at least indirectly, to the commission of the crime. The writer has felt it a duty to recommend Schuyler as a proper subject for Executive clemency."

Another physician, who was in the asylum during the year 1882, wrote concerning the convict: "From my knowledge of him I am convinced that he was insane when he committed the act for which he was sentenced. He is now recovered and has been perfectly sane for some time, and should the Governor grant his pardon I feel sure that he would become a good citizen."

A late superintendent of the asylum wrote: "I believe him recovered from insanity, and that confinement as a convict has long since answered all the object of punishment in his case, and his further detention in the asylum is not only unnecessary to confirm his recovery from insanity,

but endangers the reproduction of unsoundness of mind in his case."

The present acting superintendent, in answer to letters of inquiry, within but a short time prior to the granting of the pardon, wrote: "The effect of continued incarceration would be decidedly bad, and could in no way tend to improve his mental condition, but rather the reverse, and it might drive him to commit suicide. If released now, the chances are in favor of his becoming a law abiding citizen, especially if surrounded by good influences."

I received letters and petitions from citizens residing in the neighborhood where he lived previous to his arrest, from which it appeared that his character was good prior to this accusation. The father of the girl abducted also asked for his release. He had already been imprisoned three years and nine months, and his term would have expired the 23d day of July, 1884, if he had continued to be entitled to the reduction of time allowed for good conduct.

July 30, 1883. Dennis Kennedy. Sentenced December 1, 1881; county, Washington; crime, robbery, first degree; term, five years and five months; prison, Clinton.

This convict was indicted with another for robbing a companion of the sum of six dollars.

If there was any difference in the complicity of the two, it appeared to be in favor of Kennedy.

The District Attorney who prosecuted the indictment, wrote that he understood that both should plead guilty to the offense of larceny from the person, which plea, it appears, he was ready to accept.

Kennedy's companion in the indictment did so plead, and was sentenced to prison for one year and four months.

But it was represented to me that by a misapprehension

on the part of Kennedy's counsel, he was tried and convicted by a judge of robbery, as charged against him in the indictment, and sent to prison for five years and five months.

This was in December, 1881. In February, 1883, the District Attorney wrote that he concluded, upon examination and before the trial, that the offense was larceny and not robbery, and that the case seemed to lack the element of fear and violence necessary to robbery. He gave it as his opinion that the prisoner had then been punished enough. In June, 1883, he wrote that the case was the only one out of some twenty-five sent to prison during his term, in which he felt that great injustice and wrong had been done, and that the prisoner ought not to have been sent to prison for more than a year.

In December, 1882, the judge who presided at the trial and sentenced the convict for the crime of robbery, wrote that he thought the proof did not justify a conviction for robbery, and that his sentence should be commuted to one year.

Upon such representations, and upon such other facts as were presented to me, it became plainly my duty to correct the wrong for which the judge who allowed a verdict to be entered which, in his opinion, was not justified by the evidence, and the District Attorney who asked for and obtained a conviction in a case where it seemed to him the most important element of the offense charged was wanting, were responsible.

August 4, 1883. James McDougal. Sentenced October 11, 1877; county, Oneida; crime, burglary, first degree; term, ten years; prison, Auburn.

The wife of this convict left him, and for some time he could not discover her whereabouts. He learned that she

was living with another man, ostensibly as a domestic, but as it now seems conceded, actually in a very different relation. The husband's repeated requests that she should return to him and restore his child, which she had taken with her, were refused ; and his efforts in that direction were resented by the man with whom she was living.

The crime of which the prisoner was convicted consisted in his bursting into the house where his wife had taken up her abode, in the night, apparently with the idea of reclaiming her and his child. He was confronted by the man who had alienated and was harboring his wife, and was by him shot and nearly killed. As soon as he had sufficiently recovered from his wounds to appear in court, he was convicted of burglary in the first degree and sentenced to prison for ten years. Nearly six years of his term of imprisonment having expired, I had but little difficulty in agreeing with the Judge who sentenced him and the District Attorney who prosecuted the indictment, in their opinion that he should be released.

September 11. 1883. John Shine. Sentenced April 21, 1882 ; county, Onondaga ; crime, mayhem ; term, seven years ; prison, Onondaga County Penitentiary.

This convict was convicted in the county of Onondaga of mayhem, and thereupon was sentenced to imprisonment for the term of seven years. Judging from the reports I received from those concerned in the trial and conviction, and the affidavit of a physician who examined the wound inflicted, but who was not sworn on such trial, I was satisfied that a verdict of assault and battery would have been much better justified by the facts. The convict had already suffered an imprisonment of nearly one year and five months ; his pardon was asked for by a number of respectable citizens

of the county, as well as the complainant who was injured; and it was recommended by the District Attorney who prosecuted and the Judge who sentenced the prisoner. His character was abundantly proved to have been good previous to this accusation, and his conduct in prison was also reported to have been good.

After a careful consideration of all the circumstances attending this case, I was entirely satisfied that the ends of justice would be fully subserved by granting an unconditional pardon.

September 17, 1883. Frank M. Baker. Sentenced, March 3, 1877; county, Cayuga; crime, bigamy; terms, five years each on three indictments; prison, Auburn.

This convict was married in 1871 in the State of Ohio. In the year 1874 a divorce was granted the parties by the courts of that State. The prisoner was charged, as one of his offenses, with marrying another person soon thereafter in this State. If this marriage was bigamous, it of course was only so because, at the time of its solemnization, he had another wife; and the existence of this fact depended upon the validity of the divorce granted in Ohio. It was held invalid by the court before which the indictment was tried, and a conviction followed. An appeal having been taken to the General Term of the Supreme Court, the conviction was by that court reversed, on the ground that the divorce was valid, and a defense to the charge of bigamy. A further appeal was taken by the prosecution to the Court of Appeals, which court reversed the decision of the General Term, and affirmed the conviction. The determination of the latter court was not unanimous, and the late chief judge was of the opinion that the question involved should

be presented to the Supreme Court of the United States for final determination.

That this divorce was invalid in the courts of this State was the judgment of our highest tribunal, and should not be questioned. But on this application the fact that learned judges of one appellate court agreed with the convict in supposing that he could marry a second time with impunity, should have its due weight.

When Executive clemency is invoked, and relief is sought from the hardship of the law's technical administration, not only the motive and intent of the criminal, but any supposition or belief upon which he may have acted, it seems to me, is a proper subject of consideration. A man unlearned in the law should not, perhaps, be too severely punished for an act which he reasonably believed not to be unlawful. But there remained two other alleged marriages, subsequent to those above referred to, upon which the prisoner was convicted of two other bigamies. On each of the three convictions he was sentenced to five years imprisonment, being the extreme penalty permitted by the law.

Of the four marriages alleged against the convict the first and last were freely admitted, the intermediate two were stoutly denied. Representations were made to me which may well cast a doubt upon the existence of the marriages which were denied, and indications were not wanting that no small degree of private animosity entered into the prosecution. Without, however, discrediting the finding of the jury in this matter, I was satisfied that the imprisonment of the convict should terminate.

If he had been sentenced to imprisonment for ten years, which would have been the extreme penalty upon two convictions, and a severe punishment for the three offenses

charged, the reduction of time which he had earned by good conduct in prison, would have entitled him to his discharge before the date of his pardon.

His pardon was asked by a large number of his friends and acquaintances, who are indorsed as respectable and reliable citizens; and his good character previous to his arrest is abundantly vouched for.

I determined to grant a pardon in this case because I was convinced that in any event, the punishment already suffered by the convict had fully vindicated the law, and answered the ends of justice.

September 21, 1883. John J. Faley. Sentenced September 5, 1882; county, New York; crime, burglary, third degree; prison, New York State Reformatory.

This lad and two others were indicted for breaking a pane of glass in a shop window and stealing property of the value of twenty-five dollars or less. They were charged with burglary in the third degree. The companions of the convict, upon a trial, were convicted of petit larceny and sentenced to six months imprisonment, and to pay a fine of fifty dollars. Faley pleaded guilty to the indictment, and the court sentenced him to the Reformatory. There was no intimation that there was any difference in the guilt of the parties accused, and yet the two who demanded a trial have long since been restored to their friends.

The parents of this boy are hard-working, industrious people, and it was abundantly established that up to the time of his arrest he had been obedient, faithful and honest. He was employed at that time in the same establishment where his father worked. In reply to my inquiries addressed to his former employers, they wrote as follows: "We can and will

give him steady employment at our New York store, as soon as he returns there; the father is and has been in our employ for over two years past, and the boy also worked for us before his arrest, as driver of our delivery wagon, and was always faithful and honest."

His conduct in the Reformatory was good. It was represented to me that the grief of his mother, caused by his imprisonment, had greatly affected her both in mind and body.

I was thoroughly convinced that the public good would not suffer by the discharge of this prisoner, and that his welfare would be promoted by his return to his parents and his former employment.

This led me to grant the pardon prayed for.

September 26, 1883. James McGee. Sentenced August 8, 1883; county, Rensselaer; crime, petit larceny; term, six months; prison, Albany County Penitentiary.

This convict was convicted of petit larceny by the police magistrate of the city of Troy, on the 8th day of August, 1883, and sentenced to the Albany County Penitentiary for six months.

It was represented to me that this young man did not belong to the criminal class, and that he seemed thoroughly penitent. Since his imprisonment his father suddenly died, leaving his mother and six children younger than the prisoner entirely without the means of support. I had a petition signed by prominent citizens of Troy, including the police authorities, asking his pardon, and the police magistrate who convicted and sentenced him earnestly urged his release, and expressed the decided opinion that the reformatory objects of punishment had been accomplished in his case.

I had the pledge of the party by whom his father was employed, that the son, if released, should have the place made vacant by his father's death, thus relieving the public authorities from the support of the family.

I deemed the facts presented to me a sufficient justification for the pardon of the convict.

October 9, 1883. Emma Orlock. Sentenced October 15, 1873; county, New York; crime, arson first degree; term, life; prison, Sing Sing, transferred to Kings County Penitentiary.

The offense of which this prisoner was convicted consisted in setting fire in the night-time to the contents of a trunk belonging to her, for the purpose of obtaining the insurance upon the same. The fire in a very slight degree burned the floor of the room in which the trunk was located. This room being a part of an inhabited dwelling-house the offense was charged as arson in the first degree.

I should have been much better satisfied that the conviction was exactly right if it had been of arson in the third degree, for which the maximum imprisonment would have been seven years.

The attorney who prosecuted for the people wrote that the counsel for the convict attempted to induce her to offer a plea of guilty of a degree of arson lower than the first, and that if it had been offered he believed it would have been accepted. This officer, in full possession of all the facts, strongly recommend the pardon. The character and standing of the others who asked for this convict's release, made the strongest possible petition. The prisoner at the time of her conviction had not long been in this country, having been born and reared in Austria. She but imperfectly understood our language and had no friends here, except

such as she had gained by faithful service as a domestic in several very respectable families in the city of New York. These and several other philanthropic persons interested themselves in her behalf and promised that if released, she should be immediately sent to her friends at her distant home.

She was imprisoned, before her conviction and since, more than ten years, and during her incarceration she had been obedient to the rules of the prison and well behaved.

Upon the representations made to me upon this application, I was entirely convinced that this convict had been imprisoned as long as justice, the public good and the reformatory purpose of punishment require.

October 26, 1883. William Rabson. Sentenced January 17, 1877; county, Rensselaer; crime, rape; term, fifteen years; prison, Clinton.

This young man was seventeen years of age when sentenced. The complainant was nearly the same age, and resided with her mother, who kept a disreputable house in the city of Albany. The two went together for a ride on Sunday afternoon, and about two o'clock the next morning the girl came home accompanied by two men, to whom she had complained that she had been outraged.

The next day she made complaint to the police, accompanied by her mother, and they were immediately taken before the grand jury which was then in session, when there were presented, in corroboration of the testimony of the complainant, the clothes which it was alleged that she wore at the time of the commission of the offense, the condition of which went far towards establishing in the minds of the grand jury the guilt of the accused. An

indictment was promptly found, and the prisoner, under the influence of fright and on the advice of counsel, who, upon the proof presented saw no chance of escape, pleaded guilty to a crime of which he, all the time, protested that he was innocent.

I found, among the papers presented upon the application for pardon, the affidavits of three women, who at the time the offense is charged to have been committed, lived in the same house with the complainant and her mother. I examined all of these women (except one who had died), and another one who also lived in the same house, and also a number of the members of the police who were connected with the case. I had also the statement of one of the men who accompanied the complainant to her house on the night in question, and of still another party, who saw and talked with the prisoner and the complainant just previous to the first complaint on the part of the girl of any ill usage.

From the affidavits referred to and the statements thus obtained, I was satisfied that the charge made against the prisoner was without foundation, and that the evidence produced in its support was false and fabricated.

The prosecuting attorney who presented the case to the grand jury, in a personal interview, expressed the same opinion; and in a letter written by him in regard to the case, he used the following language:

"After the excitement had subsided, I became satisfied that the whole transaction was a blackmailing scheme; and Judge Strait, who sentenced him, told me during his lifetime that he had come to the same conclusion."

The prison officials spoke in the highest praise of the conduct of the convict since his incarceration, and reported that he had learned to read and write.

He appeared to have no friends who interested themselves in his behalf; but after an imprisonment of almost seven years I did him justice, as nearly as I could, by granting him a pardon with a full restoration to citizenship.

October 31, 1883. J. Harvey Lyboul. Sentenced February 13, 1882; county, Onondaga; crime, larceny; sentence suspended.

The offense of the defendant consisted in stealing various small articles for which he had no possible use, and which he neither sold nor gave away.

The judge of the court in which the indictment was found stated, that upon an investigation had after his plea of guilty, it appeared that prior to his offense the defendant had undergone a severe illness and had become addicted to the use of morphine, and it was claimed that he was so much under its influence at the time of taking the property which he was accused of stealing, that he was not responsible for his acts. The court and District Attorney believing that this might be the case, sentence was suspended upon his plea, and has not yet been pronounced, though nearly two years have elapsed. The subsequent conduct of the defendant has fully justified the court in its clemency, he having, since the conviction, entirely abstained from the use of morphine, and having by his exemplary life fully deserved and received the respect and confidence of his neighbors and fellow townsmen. The Judge who accepted his plea of guilty, the District Attorney who prosecuted the indictment, and a great many respectable citizens who know the defendant well and were acquainted with the circumstances of his case, earnestly requested that he be pardoned and restored to citizenship.

It was doubtful if the defendant lost his rights as a citizen

under this conviction, but in order to save the question I decided to pardon and restore him to citizenship.

November 10, 1883. James Sherwood and Thomas Howard. Sentenced November 4, 1865; county, Livingston; crime, murder, second degree; term, life; prison, Auburn.

The crime of which the convicts were guilty was an atrocious one. An old man was assaulted in his own house, and while one restrained him the other stole certain money which was kept in the house. Nearly three weeks after, the victim of the assault died.

The District Attorney who prosecuted the case wrote that, after a *post mortem* examination, the physicians who conducted it reported to him that the deceased died of consumption, and that he, the District Attorney, requested the physician to keep the result of his examination secret. He plainly acknowledged that the plea of guilty of murder in the second degree, was obtained through the fear on the part of the accused and their counsel, in ignorance that the assault was not the direct cause of death, that a trial might result in a conviction of the highest offense known to the law. It is not surprising that this letter contained the following confession: "I think it is plain they did not commit murder. I have long had unpleasant reflections whether I was not unjustly severe on all the parties."

The Judge who sentenced the convicts and the physician who made the *post mortem* were both dead, and in addition to the letter above referred to, I was only able to obtain a statement from the committing magistrate which sustained the theory that death was not caused by the attack made by the convicts.

From all the facts I was able thus to obtain, it appeared

that the offense of which these prisoners was really guilty was robbery in the first degree. The highest penalty for this crime is imprisonment for twenty years. Both of these convicts, by good conduct in prison, earned the full commutation allowed by law, so that the eighteen years which they have actually served is nearly equivalent to a sentence of thirty years.

With no sympathy for these convicts, and entertaining the utmost detestation for their offense, I still deemed it my duty, because the law had so plainly miscarried in these cases, to interpose a pardon.

November 12, 1883. Martin Hogan. Sentenced July 23, 1883; county, Dutchess; crime, assault on wife; term, six months; prison, Albany County Penitentiary.

This man had been imprisoned more than three months. He had a family dependent upon his earnings for support, and his wife begged for his release so that she and her children might be provided for during the coming winter. The justice who sentenced him recommended his pardon and expressed the belief that if released he would not repeat acts of violence. Out of consideration for his family and to relieve the public of their support, and in the belief that the imprisonment already suffered by him was sufficient to insure his better conduct in the future, I determined to grant him the pardon applied for.

November 22, 1883. Bernard Fallon, Sentenced July 20, 1883; county, Albany; crime, breach of peace; term, fine \$125 or in default to be imprisoned nine months; prison, Albany County Penitentiary.

This pardon was granted upon the following grounds:

It appeared from an examination of the case that the

prisoner was a boy who had previously borne a good character and had never before been convicted of any offense. He was the support of an aged mother who had recently suffered a paralytic stroke, which had left her in a helpless condition. I had before me all the circumstances of the offense, and I was fully satisfied that the punishment was excessive, and it was not entirely clear that the sentence imposed was legal under the statute. In any event, this prisoner had already undergone more punishment than that provided by the general laws of the State in default of payment of fine, viz.: not to exceed one day for each dollar of fine imposed. His pardon was strongly recommended by the magistrate of the court in which he was sentenced, and also by many reputable citizens.

December 22, 1883. Wm. G. Russell. Sentenced December 27, 1882; county, Kings; crime, bigamy; term, two years; prison, Kings County Penitentiary.

This pardon was granted on the following grounds:

It was represented by the District Attorney that the prisoner was young, weak-minded and silly.

Certain facts connected with the two marriages, which made up the offenses, were calculated to mitigate the crime, though there seems to be no doubt of the prisoner's guilt.

While ignorance of the law is no excuse for its violation, it was urged in this case as an extenuating circumstance.

There was no issue born of either of these marriages, and divorces were granted in both.

The District Attorney who prosecuted the indictment wrote:

"The time he has already served in the Penitentiary has had its effect, just as much as if he finished his term. In

view of his youth, and the fact of his never having been arrested before, I have no hesitancy in recommending his pardon."

While the above considerations were not altogether conclusive, there was another in connection with them which inclined me to think that justice would not miscarry if the prisoner were released. It was shown to my satisfaction that the prisoner was suffering from incipient consumption, and, on this ground, had been entirely relieved from hard labor in the Penitentiary.

The prison physician certified:

"He evidently has tubercles in top of left lung. With so striking a tendency to consumption, I have no hesitancy in giving it as my opinion that another year of confinement in the Penitentiary would greatly endanger his life."

For the reasons above stated, and because I was satisfied that his surroundings would be of such a character as to have a good and restraining influence on his future life, which I believed would be short at best, I concluded to remit the remainder of his sentence by a pardon.

COMMUTATIONS.

March 7, 1883. Louis Schewe. Sentenced December 23, 1881; county, Cayuga; crime, violating excise law; term and fine, sixty days in jail and \$150 fine; prison, county jail.

Sentence commuted to payment of the fine of \$150.

This commutation was granted on the grounds:

That the sentence of sixty days imprisonment and the fine of \$150 was unusually severe, and imposed as a means to induce Schewe to abandon his business.

The fine imposed, in itself, was treble the fine imposed for similar offenses against other persons, at the same time.

It has also satisfactorily appeared that Schewe had given up the business of selling malt liquors.

The commutation was unequivocally urged by the Judge who presided at the trial, and a large number of prominent citizens at his place of residence.

April 28, 1883. Clark Howard. Sentenced January 31, 1883; county, Oneida; crime, indecent exposure; term, three months and \$100 fine; prison, Albany County Penitentiary.

Sentence commuted to imprisonment from February 1, 1883.

This commutation of sentence was granted upon the grounds:

That the term of imprisonment alone was a sufficient punishment for the offense committed, the Judge who sentenced the prisoner having expressed the opinion that upon a further investigation after trial, there were circumstances that entitled the offender to a less severe sentence.

That the prisoner was without the means to pay the fine imposed.

That his occupation was that of a market gardener, and if he had not been released at date of commutation he would have been deprived of the means of his support for the remainder of the year.

May 18, 1883. Charles P. Bragle. Sentenced December 1, 1881; county, Albany; crime, attempting wrongfully to obtain public moneys of and from the county of Albany; term, one year and six months; prison, Albany County Penitentiary.

Sentence commuted to one year and twenty-six days actual imprisonment in the Albany County Penitentiary. The term to begin on the 22d day of April, 1882, and to end on the 18th day of May, 1883.

This commutation was granted on the grounds:

That the prisoner's term by commutation under the provisions of the statute had nearly expired, and that his conduct in the Penitentiary had been unexceptionable.

It was recommended by the Judge who presided at his trial and by the District Attorney who appeared in this case on behalf of the people.

It also satisfactorily appeared that the prisoner had suffered a great domestic affliction, in the loss of a child, and the commutation was asked that he might be allowed to be present at the funeral rites.

May 19, 1883. Mortimer A. Wandall. Sentenced November 15, 1882; county, Westchester; crime, embezzlement; term, six months and fifty dollars fine; prison, Albany County Penitentiary.

Sentenced commuted to imprisonment in the Albany County Penitentiary for the term of six months and four

days, to begin on the 15th day of November, 1882, and to end on the 19th day of May, 1883.

This commutation of sentence was granted on the grounds :

That the prisoner's conduct was good in the Penitentiary, and that he was without the means to pay the fine imposed in addition to his term of imprisonment.

That it was his first offense, and that he had previous to conviction borne a good character.

It was recommended by the Police Justice by whom he was committed, by the complainant and a number of citizens of the highest character, who were conversant with the circumstances of the case.

June 13, 1883. James Riley. Sentenced January 22, 1877; county, Queens; crime, burglary first degree; term, eighteen years; prison, Sing Sing, transferred to Auburn.

Sentence commuted to ten years imprisonment with usual deduction for good conduct. The term to begin January 26, 1877.

This convict was one of four or five persons indicted for burglary in the first degree in Queens county. He turned State's evidence, and through his testimony the others were convicted.

As an inducement to testify against the other prisoners, the District Attorney promised him that he would ask for his pardon after he had been imprisoned four or five years. In pursuance of this agreement the District Attorney asked that a pardon be granted.

Solely upon the grounds above stated, I concluded to commute the convict's term to ten years, which, if he earns deduction for good conduct, will terminate his imprisonment August 25, 1883.

June 18, 1883. Joshua Gifford. Sentenced May 4, 1883; county, Oswego; crime, murder, first degree; sentenced to be hanged June 22, 1883. Sentence commuted to imprisonment in the Auburn State prison for the term of his natural life.

The offense of which this man was charged was the killing of his wife, on the 1st day of January, 1883, by repeated blows upon her head with an iron poker and a stick of stove-wood.

A commutation of his sentence to life imprisonment was asked by a very great number of the best citizens of the locality where the trial was had, including many public officials.

The Judge who presided at the trial also earnestly recommended that the death sentence be commuted, and unhesitatingly declared that in his opinion such a course would be "in the interest of justice."

The testimony taken was very voluminous, nearly four weeks having been consumed upon the trial. I made quite a thorough examination of the evidence, fully appreciating that a sympathy, by no means discreditable, frequently prompts an appeal for clemency, and that my responsibility in this matter could neither be divided nor transferred.

The convict was seventy-seven years of age, and up to the time of his arrest had maintained a good character.

A number of years previous to his crime he married the woman whom he killed. It transpired upon the trial that they had not lived happily together, that they had quite frequently quarreled and once separated.

The killing of his wife by the convict was conceded, and the jury had only to determine whether, if the accused was responsible and was not justified, what was the grade of the homicide he had committed.

Upon the proof there could have been but little difficulty in arriving at the conclusion that there was no justification for the act and that the prisoner was entirely responsible to the law.

But to constitute his act murder in the first degree, of which he was convicted, it was necessary, under the statute, that it should have been committed "from a deliberate and premeditated design to effect the death of the person killed or of any human being."

The deliberation and premeditation, which are indispensable elements of this crime, could only have been inferred from certain facts which were proved. Upon a careful consideration of such facts, they appeared to be entirely consistent with the theory that the homicide was committed intentionally, but without deliberation or premeditation. This defines murder in the second degree, which is punishable by imprisonment in a State prison during life.

The verdict of a jury in such a case should not be lightly questioned or impeached. But when relief from the rigor of the law is invoked, a doubt in the mind of the Executive as to the existence of any element necessary to the crime, as found by the jury, may well be put in the scale with other considerations, on the side of clemency.

Such a doubt in this case, of which I could not rid myself; the advanced age of the convict; his previous good character and fair standing in the community; the almost universal sentiment of his neighbors in favor of his commutation; and the expressed opinion of the learned judge who heard the evidence and pronounced the sentence, that the punishment of death should not be inflicted, induced me to commute the sentence in this case from death to imprisonment in a State prison, during the natural life of the convict.

July 28, 1883. Aden Seymour. Sentenced May 1, 1883; county, Chemung; crime, intoxication and vagrancy; term, six months; prison, Monroe County Penitentiary.

Sentence commuted to three months imprisonment in the Monroe County Penitentiary from May 2, 1883, and to end August 1, 1883.

The sentence of this convict was commuted on the grounds:

That he was entirely unknown, and was supposed to be a common tramp at the time and place of conviction, and received the punishment it was believed he deserved. Subsequent developments, however, disclosed the fact that he was in the city legitimately seeking employment, and that his antecedents were very respectable. The magistrate before whom the conviction was had joined in the application for the commutation of his sentence.

August 8, 1883. Michael Ready. Sentenced October 26, 1881; county, Onondaga; crime, grand larceny; term, five years; prison, Onondaga County Penitentiary.

The sentence was commuted to three years imprisonment in the Onondaga County Penitentiary, and to begin October 27, 1881.

The sentence in this case in view of all the facts connected with the commission of the offense, was a very severe one. The convict had behaved well in prison and seemed inclined to abandon evil ways and earnestly endeavor to become a useful citizen. The Judge who sentenced him recommended that his term be shortened, and I was convinced that some degree of clemency could be extended to him with a promise of good results.

I therefore determined to commute the sentence in this case to a term of three years. With this commutation the

convict can, by continued good conduct, earn his release on the 26th day of February, 1884.

September 15, 1883. Alexander Barto. Sentenced November 23, 1880; county, Onondaga; crimes, burglary, first degree, assault with deadly weapon and accessory to assault with deadly weapon; term, twenty years for first crime, five years for second crime, and five years for third crime; prison, Auburn.

Sentence commuted to imprisonment in Auburn for the term of four years from November 26, 1880.

This convict was charged with complicity in a most atrocious offense, which involved burglary and a murderous assault. The District Attorney who prosecuted the indictment, however, said of Barto's connection with the crime: "Barto was an inactive participant, and by a technicality only, chargeable with the assault." So far as the burglary is concerned, the most that can be said is that he watched outside while another broke and entered the premises. At the time of his arrest and sentence, the convict was not quite seventeen years old. He was a perfect stranger in the county where the offense was committed, and his antecedents were utterly unknown. His appearance and the fact, quite evident, that he was not one of the criminal class, excited at the time, I was informed, general sympathy, and it was thought by both the Judge who sentenced him and the District Attorney, that his sentence should be severe, and that a commutation should be recommended if facts afterwards discovered should justify such a course.

It now appears that this young man was adopted by a christian and estimable family in Indiana, when he was five years of age; that he, up to the time of leaving his foster parents, shortly before his arrest, had the advantage of religious teaching and training which he seemed fully to

appreciate and heed, developing no bad inclinations or tendencies, but, on the contrary, by his obedience, industry and affectionate disposition, attaching himself to those who had the care of him, by a love not less than parental.

A few months before his sentence he was enticed from his home by a chance acquaintance, older in years and not unfamiliar with crime, who concocted and actively perpetrated the offense for which Barto suffered imprisonment.

Since his incarceration he had suffered from disease, and was in the prison hospital under treatment.

The District Attorney recommended a commutation of his sentence. The Judge who sentenced the convict was dead.

A petition for his release was presented, numerous signed by good citizens of the State of Indiana, who knew the convict at his former home, and bore testimony to his good character and correct demeanor. The prison authorities reported that his conduct during his confinement had been unexceptionable. His friends stipulated that when discharged he should at once be returned to his home. The crime committed, with which I assumed he was more or less willfully connected, was so heinous that I was unwilling to grant a pardon, but, in view of all the circumstances, I determined to commute his sentence to imprisonment for the term of four years. With continued good conduct, this entitled him to his discharge on the 25th day of November, 1883.

September 21, 1883. William Delaney. Sentenced July 7, 1883; county, Broome; crime, assault and battery; term, six months; prison, Albany County Penitentiary.

Sentence commuted to imprisonment in Albany County Penitentiary for the term of three months, to begin July 7, 1883, and to end October 6, 1883.

The sentence of this convict was commuted on the grounds:

That previous to this conviction he had been an industrious and well-behaved man, and although he was not the chief offender he received the same sentence as was imposed upon the latter.

The Superintendent of the Penitentiary reported his conduct good, and the commutation of his sentence was strongly recommended by the complainant, as well as by many respectable citizens who were familiar with the circumstances of the offense.

September 26, 1883. Frank Dolan. Sentenced June 30, 1883; county, Westchester; crime, assault third degree; term, four months; prison, Albany County Penitentiary.

Sentence commuted to three months imprisonment in the Albany County Penitentiary, to begin on July 2, 1883, and to end on October 1, 1883.

This young man was sentenced to four months imprisonment in the Albany County Penitentiary June 30, 1883, by a justice of the peace for assault.

The offense was not serious, and the sentence was a severe one. A number of the citizens of Peekskill, where the crime was committed, asked for the pardon of the prisoner, and the justice who tried and sentenced him recommended a commutation of his sentence.

I determined, upon consideration of all the facts presented, to commute the sentence in this case to imprisonment for three months.

October 22, 1883. Jeremiah O'Day. Sentenced October 7, 1876; county, Erie; crime, robbery after petit larceny; term, twenty years; prison, Auburn; transferred to State Asylum for Insane Criminals.

Sentence commuted to eleven years imprisonment from October 9, 1876.

It appeared that the prisoner was transferred March 13, 1878, from Auburn Prison to the State Asylum for Insane Criminals, and was in continuous confinement there from that date to the date of this commutation.

That he was not only insane, but was suffering from an incurable disease from which his early death was anticipated.

Clemency was asked in order that for the remaining period of his life he might be placed in some institution for the insane near his home and friends.

His sentence was commuted to eleven years from October 9, 1876, subject to the usual allowance for good conduct; the provisions of law under which his removal was requested, and the restrictions and limitations provided in cases of insane convicts.

October 30, 1883. William Boorne. Sentenced June 2, 1874; county, Cattaraugus; crime, murder, second degree; term, life; prison, Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of sixteen years, from June 9, 1874.

At the time of the sentence of this prisoner he was but fourteen years and five months of age, and previous to his arrest for this offense had been living with his mother and step-father. There was no trial, the prisoner having plead guilty to murder in the second degree.

The District Attorney who prosecuted the indictment, after a more thorough examination of the facts than was made at the time the plea of guilty was received, stated :

"I am satisfied that the prisoner should not have been convicted of murder, but of some degree of manslaughter. The deceased was his step-father, a man of violent temper and intemperate habits. The mother and sister were away at the time, leaving the prisoner and the deceased alone, and they

drank liquor during the evening until they became very much intoxicated. About midnight the prisoner wanted to leave and go to a dance ; the stepfather tried to prevent him ; a scuffle ensued which continued until the parties got out of the house into the back yard, where the stepfather was found killed with an axe, and the prisoner lying beside his body in an unconscious condition. There were no witnesses to the quarrel, but it undoubtedly started as stated above. It was proved that deceased was in the habit of treating the prisoner with violence and even cruelty, and it was abundantly proved that the deceased furnished the whisky and gave it to the prisoner."

The learned trial judge who presided at the Oyer and Terminer and who sentenced the prisoner stated :

"At the time of committing this offense the prisoner was very young. He was surrounded by family friends and guarded by counsel, but in view of the punishment being a life sentence, I have never felt quite satisfied with the action of the court in receiving the plea of one so young for a charge so grave, followed by a punishment so severe."

In a further communication he stated :

"A case of such gravity ought to be disposed of by the verdict of a jury, and all the facts and circumstances should be related upon oath."

After a thorough examination of the facts and surrounding circumstances, I was of the opinion that the course suggested by the judge should have been adopted in this case. Inasmuch as a trial was not had, there seemed to me to be sufficient doubt connected with the case to warrant the commuting of his sentence, taking all the circumstances into consideration.

The officers of the prison reported that his conduct had been unexceptionable, and that while there he had employed his opportunities in acquiring the rudiments of an education.

As the convict had already been incarcerated nearly ten

years of actual time, I was convinced that the ends of justice would not suffer by the commutation of his sentence to sixteen years, with the usual allowance for good behavior, which, if his conduct continue good, will entitle him to his discharge on the 8th day of June, 1884.

November 5, 1883. George Woodruff. Sentenced January 19, 1876; county, Oneida; crime, arson first degree; term, life; prison, Auburn.

Sentence commuted to thirteen years from January 20, 1876.

This convict, with one Pierce, was sentenced on the 19th day of January, 1876, to be imprisoned in Auburn Prison during life, for the crime of arson in the first degree. The building contained a stock of goods, and the object of the parties was to obtain an excessive insurance which Pierce had obtained thereon. Both of the accused confessed the crime, and pleaded guilty to the indictment found against them therefor. Pierce was released in January, 1879, his sentence having been commuted to imprisonment for the term of four years.

The application for the pardon of Woodruff was supported by a numerously signed petition and a large number of letters from good citizens, showing that the convict, prior to his arrest for this offense, sustained a good character, that he was sincerely penitent and that his wife and two children sadly needed his support.

The Judge who sentenced him for life represented that he only did so because the law, in force at that time, left him no discretion, and the District Attorney who prosecuted the indictment recommended his pardon.

I was entirely satisfied, from an examination of the case, that this convict was not the originator of the crime, but

became the guilty tool of his companion, who had now been at large nearly five years ; and I believed, if liberated, he would justify, by an upright life, the clemency exercised in his behalf.

I determined to commute the sentence of this convict to imprisonment for the term of thirteen years. If his conduct in prison continue as good as heretofore, he will be entitled to his discharge on the 19th day of April, 1884.

November 10, 1883. James Goggins. Sentenced June 19, 1874 ; county, New York ; crime, robbery, first degree ; term, twenty years ; prison, Sing Sing, transferred to Clinton.

Sentence commuted to fifteen years in State Prison from June 22, 1874.

It appeared that this convict and another were jointly indicted and convicted for the crime of robbery in the first degree.

From an examination of the evidence it was not entirely satisfactory, as establishing the commission of the crime charged; and it failed to show any difference in the degree of guilt of the two convicts.

No evidence was given tending to show the previous good character of this convict, while some was produced in favor of his companion, in this regard.

Yet, from a careful examination of the facts and circumstances of the offense charged, I failed to discover any valid reason for making the term of this prisoner five years longer than that of his companion, and, therefore, determined that justice would be promoted by making the sentence of each equal.

His conduct in prison was good, while his mind was reported as somewhat impaired.

November 12, 1883. Louis Strauss. Sentenced October 18, 1883; county, New York; crime, assault, third degree; term, sixty days; prison, New York Penitentiary.

Sentence commuted to thirty days imprisonment in New York County Penitentiary from October 22, 1883.

This commutation was granted upon the recommendation of the Judge who sentenced the prisoner, who stated that facts had come to his knowledge since that time which satisfied him that the sentence was too severe.

November 16, 1883. John Shine. Sentenced December 27, 1880; county, Niagara; crime, robbery, first degree; term, ten years; prison, Auburn.

Sentenced commuted to five years from December 28, 1880, in Auburn State Prison.

This case was presented to me orally by the District Attorney, by counsel for the convict, and the evidence taken upon the trial was read to me by them. I had also before me petitions for the pardon of the convict, numerous signed, and letters from the prosecuting attorney and the Judge who pronounced the sentence. The latter did not recommend a pardon, but the District Attorney emphatically declared that, in his opinion, the crime proved was at most only an assault with intent to rob. This, with a presentation of the evidence, satisfied me that the District Attorney, at a rather late day, had then a correct conception of the real offense of which the convict was guilty.

The extreme penalty for the crime of assault with intent to commit robbery, is imprisonment in a State Prison for five years. The sentence of this convict was commuted to that time, which, if his conduct continue good in prison, will entitle him to his discharge on the 27th day of July, 1884.

RESPITE.

July 25, 1883. Edward Hovey. Convicted of murder in the first degree, in the county of New York, and sentenced by the Court of General Sessions, September 29, 1882, to be executed November 17, 1882. From this judgment an appeal was taken to the General Term of the Supreme Court, September 30, 1882, and a stay of proceedings granted. March 22, 1883, the judgment of the trial court was affirmed; an appeal was thereupon taken to the Court of Appeals, and a further stay of proceedings granted. On June 8, 1883, the prisoner was re-sentenced by the General Term to be executed July 27, 1883, and on July 5 the Court of Appeals affirmed the judgment of the lower courts.

July 25, 1883. Respite granted until Friday, October 19, 1883.

This respite was granted to allow the Court of Appeals to pass upon an appeal which was taken from an order of the General Term of the Supreme Court, affirming an order denying a motion for a new trial, and to determine the question whether an appeal would lie to the Court of Appeals, in such a case.

In addition to this consideration, the spiritual adviser of Hovey assured me that more time was necessary to prepare the convict for his fate, and I deemed it quite proper to respite him for a time, long enough to accomplish both results.

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